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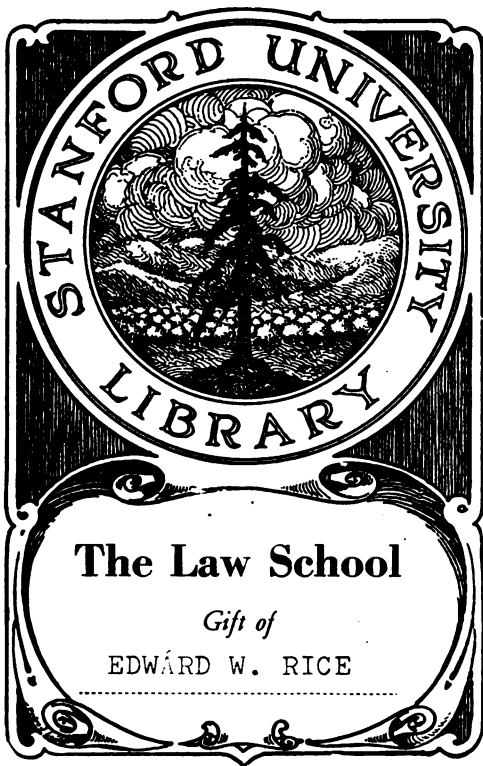
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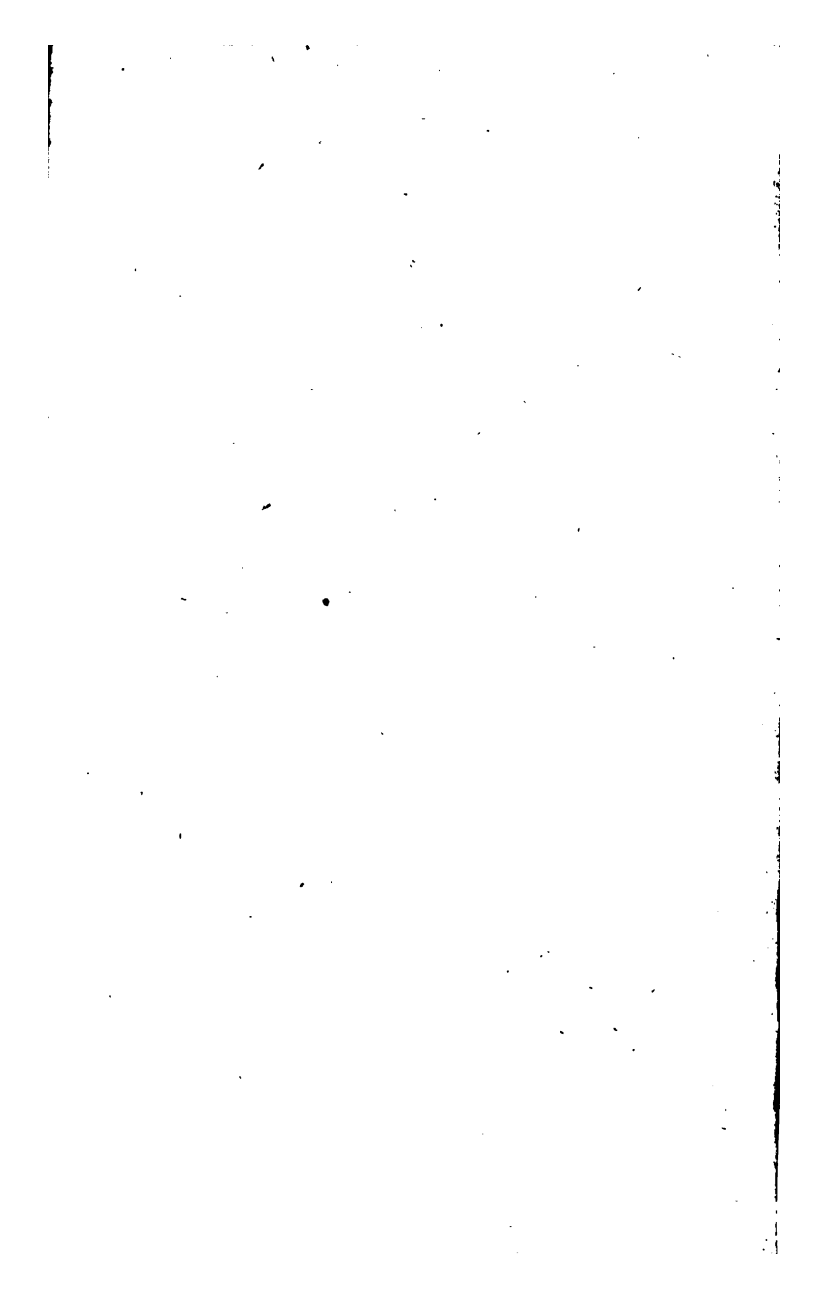
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P R E F A C E.

AS many small tracts on the antient laws of *England*, the fountain and source of the present, are now become extremely scarce, and being often incorrectly and badly printed, it is presumed new and beautiful editions of several of them, will not prove disagreeable to the public: * “ One of them has been “ already published with some success.” And as the following treatise on the various branches of Conveyancing is in the highest estimation, and referred to by most of the books of authority in the law, this should recommend it to the Students; especially as the greatest care

* The Doctor and Student, by way of dialogue on the grounds of the laws of *England*.

P R E F A C E.

and accuracy in drawing Settlements according to the established forms and rules of law, has an absolute and immediate tendency to quiet the possessions, and defend the properties of the Nobility and Gentry of this kingdom.

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Although there have been many editions of this book in the original *French*; as the laws are now readred into *English*, it is thought publishing it in that language would meet with the most favourable acceptance.

J. W.

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GRANTS.

CHAP. I.

I. **F**ORASMUCH as unto a grant, a E. 13 H.
grantor, grantee, and a thing grant- 8. 12.
ed, are requisite and necessary. First,
therefore, it behoveth to shew, what persons
may grant and what not; and of such per-
sons as may grant, by what names they may
grant: And then what persons may be gran-
tees, and by what names they may be gran-
tees: And then it behoveth to shew of the
the thing to be granted. And, first, it shall
be said, what things shall be granted by deed,
and what without deed: And then what
things a man may grant or charge: And
then * what things shall pass by the grant of * [2]
other, &c.

2. And as to the knowledge, what persons Bract. 1. 2.
may grant, and what not, it is to be under- case 5.
stood, that some grants of some persons are
void; and some grants of some persons are
voidable by themselves, and their heirs, and
by those who shall have their estates for ever.
And some grants of some persons are void-
able by the grantors only, during certain
B time;

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B time;

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time; and some grants of some persons are voidable after the death of the grantor, by the heirs of the grantors; and not by the grantors, or by any other person during the life of the grantors, &c.

- H. 14 H. 3. And know, that the grants of all dead
8. 16. persons in law, as Monks, Friars, and Canons professed, and such like others, are void, if they be not made by the Sovereigns of such houses, or by matter of conclusion, or otherwise, that it be in special cases; and therefore,
M. 2 R. 3. if a Monk, Frier, or Canon professed, who
5. is not Sovereign of the house, grant unto me
by an annuity, deed poll, the grant is void, notwithstanding that he be deraigned afterwards,
H. 32 H. or made Sovereign of the said house, or of
6. 31. another house, or created a Bishop, &c.

4. And if a commander of the Hospital of *St. John of Jerusalem* in England, grant a rent charge issuing out of land which he hath in his commandry, without the knowledge of the Prior, the * grant is void, &c. But
* [3] of the Prior, the * grant is void, &c. But
E. 10 E. 4. if a Monk or a Frier, &c. by the commandment of the Abbot or Prior, who is Sovereign of the house, and in the name of the Abbot or Prior may make a grant, and the same shall be good, if the same be delivered as the deed of the Abbot or Prior by their assent, &c.
14 H. 4. If *J. S.* being seised of an acre of land, in fee joint in the grant of a rent issuing out of the same acre with a Monk, the same is void as to the Monk, and good against *J. S.*
32. 5. But if a Monk or other religious man be farmer unto the King's Majesty, and made sale, or a bargain of a thing concerning his farm,

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farm, such sale or bargain is good; and upon M. 2 H.
that he shall have a *quod minus* against the venor 4. 7.
deed or bargainee in the Exchequer, &c.

6. And if a feme covert grant an annuity M. 1 H.
by deed, the grant is void. And if a man be 5. 12.
seised of land in the right of his wife, and his
wife grant a rent issuing out of the same lands,
without the knowledge of the husband, this
grant is void; and so it is notwithstanding
that the husband had consensance of it, if it be
made and delivered without his assent, or with
his assent, if it be made in the name of the M. 9 E. 3.
wife, and not in the name of the husband. 28.
And notwithstanding the husband were abroad
out of the country at the time of such grant
made and delivered, so that it is not known
whether he be alive or dead, yet such grant
is void if the husband be * living, inasmuch * [4]
as if the grantee by force of such grant enter H. 7 H.
into the land and distrain, the husband at his 4. 13.
return shall have for his entry and distress an H. 2 H.
action of trespass. 7. 15.

7. But if a single woman be an executrix, T. 13 E.
and she take a husband, if all the debts of 1. Exec.
the testator are satisfied and paid, she may 119.
deliver the legacies of the testator out of the E. 18 H.
goods of the testator in despite of her husband. 6. 4.
And if the debts and legacies of the testator
be satisfied and paid, she may give away the
goods of the testator which remain, to pray
for the soul of the testator in despite of her
husband. But such delivery of legacies or
gift to pray for the soul of the testator, by
the wife, before that the debts of the testator
are satisfied and paid, is void, inasmuch that

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the husband shall have thereof an action of trespass; for that it is but a wasting of the goods of the testator, if it be so that the goods of the testator which remain, will not extend to satisfy the debts of the testator, &c.

T. 47 E.
3. 18.

8. And if there be a difference betwixt the husband and the wife, by reason whereof certain lands of the husband are assigned unto his wife by the friends of the husband, and by his assent, and the wife grant a rent charge to be issuing out of the same lands unto a stranger, the grant is void, &c.

H. 27 H.
6. 7.
• [5]

9. If a single woman, being seised of a carve of land, cause a deed of a grant of a rent charge to be issuing out of the same land to be made, and she deliver the same deed unto a stranger as an escrowl, upon condition, that if the grantee go to *Rome*, and return back again before the feast of *Easter* then next following, that then he shall deliver the same escrowl as her deed unto the grantee; the woman marieth a husband, and before the feast of *Easter*, and during the coverture, the grantee goes to *Rome*, and returns back, and the estranger delivers the escrowl unto him as the deed of the woman; this grant is good, notwithstanding that the husband were seised of the land in the right of his wife, before that the grant took effect, as the deed of the woman; at which time she was married to the husband; and the cause and reason is, because that unto some purpose it shall have relation unto the time from the first delivery; that is to say, when it was delivered as an escrowl, inasmuch that

if

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if the wife in such case have enfeoffed a stranger of the said land before the condition performed, and afterwards the grantee had performed the condition, and the stranger had delivered the escrowl as the deed of the woman unto the grantee, the feoffee should have holden the lands charged, &c. because that at the time of the delivery of the deed as an escrowl she was a single woman.

10. But in the said case, the grantee * shall * [6] not have any rent by force of the said grant, before the last delivery; that is to say, when it took effect as the deed of the woman, and so to such purpose and intent, shall not have relation to the first delivery, *scil.* when it was delivered as an escrowl, &c.

11. But in the same case, if the woman had been married at the time of the delivery of the deed as an escrowl, and her husband died, and the grantee performed the condition, and the stranger deliver the grant unto him as the deed of the woman; notwithstanding that the grant is void to charge the woman; *causa patet.* See more of this in the chapter of DEEDS; and so it appeareth that some grants of some persons are void, &c.

12. Know, that some grants of some persons are voidable by themselves, by their heirs, and by those which shall have their estates for ever. And as to that, know that it is a common known rule, that all such gifts, grants or deeds made by an infant, which do not take effect by delivery of his hand, are void. But such gifts, grants or deeds made by an infant by matter in deed, or in wri-

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ting, which take effect by delivery of his own hand, are voidable by himself, and his heirs, and by those which shall have his estate.

* [7] 13. And therefore, if an infant make a deed of feoffment, and a letter of attorney unto a stranger to make livery of seisin, and he make livery of seisin by * force thereof, E.18 E.4. he shall be taken for a disseisor. And if an infant being seised of a carve of land, grant a rent charge to be issuant out of the same carve by deed, and the grantee distrain, he shall punish him as a trespasser, notwithstanding that the infant ~~did deliver the deed with~~ his own hand. But in such case the infant, nor his heir, nor his feoffee, cannot against such a deed in pleading say, that he did not grant by the deed, for that the deed is not void, but is voidable; as to say, that the grantor was within age, &c. at the time of the grant, &c.

T.25 E.3. 14. If an infant give a horse, and do not deliver the horse with his hand, and the donee take the horse by force of the gift, the infant shall have an action of trespass. But notwithstanding that maxim, if an infant be an executor, the payment of the debt of the testator by him is good and effectual, &c. And an infant shall be bounden by all acts done by him during his nonage, which acts are for his advantage, if not in some special cases. And therefore, if an infant at the years of discretion make a bond for his necessary meat and drink, or for his necessary apparel, or for his schooling, he shall not avoid

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avoid the same; *causa patet*; and so it shall be in like cases.

15. And a grant made by an infant of the age of fourteen years of a free chappel shall be good and effectual, because that he himself cannot have it. *Quære*, If the infant in such case be but of the age of fourteen years, what shall become thereof because he hath not discretion. And an infant at the age of fourteen years may present unto an advowson which appertains unto his presentment, and it shall be good; because he himself cannot have it; and because that after the six months past the ordinary shall present for lapse, &c.

E. 26 H 6.
Grant 12.
* [8]

16. All feoffments, leases, gifts or grants, made by duress, are voidable; and not void by the parties themselves, by their heirs, and by those who have their estates, &c. And therefore, if a man seised of lands, grant a rent charge by duress, and after lease the lands for life or years unto a stranger, and the grantee distrain for rent behind before the lease, or after the lease, the lessee shall have an action of trespass; so shall have the heir of the grantor, if the land had descended unto him. But know, that always it behooveth, that if they shall have trespass, that they be seised in deed of the land or tenements where the trespass is supposed, at the time of the trespass done.

17. If a man seised of a carve of land, give the same in tail by deed, and make a 9. letter of attorney to make livery of seisin, and all is done by duress of imprisonment,

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and livery of seisin is made by force thereof, now is this a disseisin unto the donor: But that doth not prove, that the deed of feoffment, and the letter * of attorney are void, for then the donor might traverse them, and that he cannot do, &c. And know, that the imprisonment ought to be made for the making of the deed, &c.

18. And therefore if a man be imprisoned upon an execution of a statute merchant, now a grant made by him unto a stranger, that he be assistant unto his deliverance is good, and not voidable, because that he was not imprisoned for the same cause. And if a man threaten to murder me if I do not grant unto him an annuity of twenty shillings, and for fear of death I grant unto him an annuity of twenty shillings, now is this grant voidable. But if a man grant one annuity for a threatening of carrying away his goods, this grant is not voidable for such threatening, because he may have an action of them, if they be taken, &c.

19. Some grants of some persons are voidable by the grantors only during a certain time; and therefore, if an infant grant a rent by fine, this grant is voidable by himself during his nonage by writ of error; but if he do not avoid it during his nonage, it is good for ever. And notwithstanding that he die during his nonage before that he hath avoided it, yet his heir shall not avoid it. *Quere*, If the donor die depending the writ of error.

20. And

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20. And if a man be seised of lands in the right of his wife, and the wife as a feme sole without her husband grant a rent by fine to be issuing out of the same land, this grant shall not bind the husband during the coverture. But if the husband die before he and his wife shall reverse the fine by error, the wife shall be bounden by this grant. * [10] M. 7 H. 4. 17 Aff. pl. 17. M. 17 E. 3. 52.

21. Some grants of some persons are voidable after the death of the grantors by the heirs of the grantors, and not by the grantors nor by any other person during the life of the grantors; and therefore, if a man of *sanæ memoriæ* being seised of a carve of land, grant a rent issuant out of the same land in fee, and die, and his heir enter, and the grantee distrain for the rent behind, the heir shall have an action of trespass. But if the grantee had distrained in the life of the grantor, for the rent behind, the grantor should not have an action of trespass, for he cannot avoid his deed by disabling of himself. E. 12 E. 4. 8. H. 39 H. 6. 42.

22. But if a man being of good memory make a charter of feoffment of certain lands whereof he is seised, and make a letter of attorney at the same time to make livery of seisin, but before delivery of seisin, by some sickness he become mute, and by signs which he makes, it appeareth, that livery of seisin shall be made, by force whereof livery of seisin is made, that is a good feoffment. 25 Aff. pl. 4. Bract. l. 12.

23. But if a letter of attorney to make livery of seisin is made of certain land, by a man of unsound memory, and this charter of feoffment of the same land was made

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before, when he was of good memory, and then livery of seisin is made by force of the letter of attorney without other assent of the feoffor, and the feoffor die, now his heir may enter upon the feoffee, but the feoffor himself in his life cannot enter.

17 Aff. pl.
17.

24. All matters of record to which a man of not found memory is party, his heir shall not avoid for the cause that his father, &c. was of *non sana memoria*, &c. And therefore, if a man of *non sana memoria* grant a rent by fine, or be bounden in a recognizance, &c. his heir shall not avoid such matter, by saying, that his father, &c. was of *non sana memoria*.

25. And know, that if a man be born dumb, but can well hear, such a man at full age by delivery of his hands by signs, and without delivery by signs. And a man that is born dumb and deaf may make a gift, if he have understanding; but it is hard that such a person should have understanding. For a man ought to have his perfect understanding by his hearing, yet divers persons have understanding by their sight, &c. And a man born dumb and blind may have understanding: But a man that is born blind, deaf and dumb, can have no understanding; so that he cannot make a gift or a grant.

26. A bastard may make a grant as another person may. And a man attainted of felony or murder, &c. may make a grant of a rent or common, or a feoffment, &c. and the same shall bind all persons but the king

* [12]
8 Aff. pl.
25-11

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king for his time, and the lord of whom the land is holden when his time shall come.

27. And as unto this matter, know, that attainder of felony, or of murder, &c. is commonly said in three manners, that is to say, by utlavery, by verdict, and by confession. But upon every of them judgment ought to be given, otherwise it shall not be said an attainder.

28. And know, that attainder by utlavery shall have relation unto the exigent as unto lands and tenements; so that a scoffment of the land or grant of a rent before the exigent awarded by him, that his attain in such manner is good: And attainder by verdict shall have relation unto the time of the felony committed according to the supposal of the indictment; as unto lands and tenements; and so shall have an attainder by confession. E. 32 H. 6.

29. But all the attainders as unto the goods shall have relation but unto the judgment given, so that a gift made of goods by such a man before the judgment is good. Also there is an attainder by act of parliament; and a man outlawed in trespass may make a gift of his goods, but the same is void to bind the king, but good to bind the party. And a gift, grant or scoffment, by the king's villain is void to bind the king, *quia nullum tempus occurrit regi*; but the same is good to bind the party himself. But a gift of the goods of the villain, of a common person made by the villain, before seizure of his lord, is good against all persons; for the title of the lord, in the goods of his villain, doth not

* [13]
E. 35 E. 3.
villain &c.

I com-

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cometence but by the seizure, and the title in the lands of his villain, doth begin by his entry, and of reat, reversion, common, advowson of a church by claim, and of common, issuing out of the land of the lord by extinguishment, and of a rent issuing out of the land of the lord by retainer or extinguishment: And if any villain have a villain, I cannot have him before seizure.

H. 14 H. 30. And yet if lord and tenant be by
8. 22. knight's service, and the tenant die, his heir within age, and a stranger take him away, the lord shall have a ravishment of ward, notwithstanding that he never seized the ward; and the reason is, because that the title of the lord in the ward doth begin by the death of his tenant, and the body of the infant is transitory. But the lord shall not have a writ of *electione custodien* for the land before entry, because that the land is not transitory.

* [14] * 31. And know, that the grants of divers persons cannot be good in perpetuity without the assent of others by way of grant, confirmation or otherwise, &c. As the grant of the Dean without the Chapter, and the grant of an Abbot without his Covent, and the grant of the Mayor without the Commonalty; and so it shall be of a Master of a College; and of all others which are bodies politick, and have a common seal.

E. 21 E. 4. 32. And all those which are recited who
13. have a joint possession with their head, as the Chapter with the Dean, &c. Grants made by such persons to charge their possession, which possession they have in common is void

to

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to charge the beasts of other persons with a distress, but his own. As put the case; A Dean grant a rent issuing out of land which he holdeth in common with the Chapter; now by this grant, the cattle of the Chapter are not liable to distress; and in that case, if the Dean be created Bishop, the grant is determined as to charge the possession. But if the grantee hath not avowed upon the land, as upon land chargeable to his distress in a court of record, he may charge the person of the Bishop in a writ of annuity, if the grant be not made under a special proviso that it shall not charge his person. H. 39 E. 3.
M. 3 H. 7.
11.

33. But if an Abbot grant a rent charge in his own name without the assent of the Convent, and the Abbot is deposed, and another Monk is made Abbot, and he who is deposed is created Bishop, now the grantee shall not charge his person in a writ of annuity; because that when he was deposed he was a dead person in law, and not of ability to bring any action; or to be sued in such case; and so by his deposing the grant was determined to charge his person, and also to charge the possession. But if the grant were by fine, the possession shall be charged. But when the Dean was created Bishop, he remained always of ability to be sued, &c. And if the Abbot after the grant, and before he was deposed, had been created Bishop, then the grantee might well charge his person in a writ of annuity; *causa patet, &c.* M. 16 E. 3.
Abbe 8.

34. The grant of a rent to be issuing out of the globe land by the ordinary only, is void.

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H. 38 E. 3. void to charge the glebe land of the parson-
 4. age; and such a grant made by the patron solely is void, to charge the possession of the glebe lands; but such a grant made by the parson alone is good to charge the glebe, during the time he is parson: But if the parson resign his benefice unto another man who is instituted and inducted, such grant is determined as to charge the glebe land, &c. But perhaps he may charge the person of the grantor in a writ of annuity, &c.

* [16] 35. But the parson, patron and * ordinary by their grant, may charge the glebe land in perpetuity. And the Abbot and Convent may charge the lands of their house in perpetuity; so may the Dean and Chapter, the Mayor and Commonalty, *mutatis mutandis*. And
 H. 31 E. 1. 90. the patron and ordinary in time of vacation may by their grant charge the lands of the parsonage, &c. And divers other persons may grant who are not here recited or mention made of them.

H. 8 E. 4. 36. Now it is to shew, by what names
 24. such persons who have ability to grant, may grant. And as unto that, know, that the name of the grantor is not put in the deed to any other intent, but to make certainty of the grantor. And therefore, if the duke of *Suffolk*, by the name of duke of *Suffolk*, without his name of baptism, grant annuity, rent, common reversion, &c. it is a good grant; because there are no more dukes in *England* of that name. And a grant of an annuity by an Abbot, by the name of the foundation, without his name of baptism, is good,

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good, if these be not any more abbots in M. 27 H. England of the same name of foundation, to 6. 3.

as the county may be known who is the grantor.

- 37. If father and son are of one name, M. 36 H. and the father grant an annuity by his name 6. 49.

without any addition, this is a good grant; for when there is no addition, it shall be intended the grant of the father. If the son M. 13 H. in such case grant one * annuity by his name 4. 4. without any addition (I conceive) such grant is * [17]

good: for if the grantee bring a writ of annuity against the son, he cannot help himself by any means; for if he deny the deed, it shall be found against him, &c.

- 38. But if J. S. grant annuity by deed; H. 3 H. 6. and in the deed the surname, *scil.* S. is, but 26.

not his name of baptism, this grant is not good. And if J. S. grant annuity by his contrate name of baptism, *viz.* by the name of T. S. some think this grant is not good; because that the deed of *Thomas* cannot be the deed of *John*; for a man cannot have two names of baptism; and so they conceive the grantor may deny the deed.

- 39. And some are of contrary opinion; M 9 E. 4. for when they are at issue upon the deed, the 43. plaintiff may give in evidence the day, year and place, where the plaintiff delivered the same as his deed, &c. when the grantor hath not any thing to help him, but to say, that his name is *John*, and not *Thomas*, and so not his deed. Now they say, that the plaintiff may demur upon this evidence; forasmuch as he hath not gained the delivery of the deed

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deed as his deed; they say, that he shall be concluded to say, that his name is other but as the deed doth suppose. *Idea quare.*

M. 3 E. 3. 40. But if *J. S.* reciting by his deed that
 Ith. Not: his name is *J. S.* by the same deed grant an-
 Estop. nuity by the name of *T. S.* * this is a good

132.
 * [18] grant; for the writ shall be brought upon
 the whole deed. And if *Alice* at *Stile* reci-
 ting by her deed, that she is a feme covert;
 (and in truth she is a feme sole) grant an-
 nuity, &c. it is a good grant, for that is but
 a void recital, and the grantees need not put
 that in his writ, and that cannot be a con-
 clusion to him when he sheweth the deed.
 And so shall it be if *J. S.* knight, reciting
 by his deed that he is yeoman, grant an-
 nuity, &c.

41. But if a feme covert reciting by her
 deed that she is a feme sole grant annuity,
 this is a void grant; for she shall not be con-
 cluded by this recital, &c. But if a man
 E. 9 E. 3. who is baptized by the name of *John*, by the
 14. same name at his full age grant annuity, and
 H. 12 R. afterwards is confirmed by the name of *Tho-*
 2. 58. *mas*, now his name of baptism is changed,
 and yet the grant is good; and if a feme sole
 grant to me annuity, and afterwards take a
 husband, now she hath left her surname,
 yet the grant is good.

42. The grants of such persons which
 are good without name of baptism, not-
 withstanding that such persons name them-
 selves by contrary names of baptism, yet
 their grants shall be good. And therefore,
 if an Abbot grant common in his lands by
 the

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the name of *Richard*, Abbot, &c. and his name is *Robert*, this is a good grant, if there be not any more Abbots of the same name of foundation. And such things as pass by livery, as * land, &c. notwithstanding the deed of feoffment be made of that by contrary name of baptism of the feoffor, and by contrary name of baptism of the feoffee, it is a good feoffment, if livery of seisin be made by the feoffor unto the feoffee, and it takes effect by the livery, and not by the deed, &c. And if a man give unto me his horse by word, and makes to me a writing of the same by his contrary name of baptism, and by my contrary name of baptism, it is a good gift by word, but not by the writing, &c.

43. Now is to shew, what persons may be grantees; and as to that, know, that feme covert may be a grantee, and a grant made to a feme covert shall be good and effectual until her husband hath disagreed. And therefore, if a rent-charge be granted unto a feme covert, and the deed is delivered unto her, her husband not knowing thereof, and the husband die before any disagreement made by him, and before any day of payment, now the grant is good, and shall not be avoided, to say, that the husband did not agree, &c. But the disagreement of the husband ought to be shewed.

44. If a feme covert be enfeoffed of an acre of land, her husband being beyond the sea, and her husband return, and is not content with the feoffment made to his wife, and

M. 27 E.

3. 85.

* [19]

3 Aff. pl.

4.

E. 1 H. 5.

8.

1 Inst. 3. a.

Co. Copy.

5. 35.

M. 15 E.

4. 2.

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* [20] and will not suffer his wife to take the profits of the lands, nor to continue seisin of the same land, but causeth * her utterly to relinquish and refuse the seisin and occupation of the land, and he himself utterly refuseth to occupy the land; now by this means he shall discharge himself of the damages from the time that his wife and he did refuse the occupation of the land in a writ of entry in the *Per*, brought against him and his wife, in case the feoffor of his wife were a disseisor. But for the time that his wife doth occupy the land, he shall answer damages; *tamen querit, &c.*

45. But know, that by this refusal of the occupation of the land by the husband and the wife, the freehold is not out of them, if no other person enter into the land, but
T. 16 E. 4. they remain tenants as to use an action, &c.
4. But if lord and tenant are, and the lord marieth a wife, and the lord being beyond the sea, the tenant doth enfeoff the wife of the lord and a stranger of the tenancy, and
T. 10 E. 4. the lord return and distrain the cattle of the
21. stranger for his rent, now by this distress the wife is out of possession of the land, and the possession doth wholly remain in the stranger, who is the other feoffee; for the taking of the stress by the husband is a sufficient disagreement that his wife shall not take by the feoffment; for otherwise, the husband should be greatly mischiefed: For, for all the time that his wife shall be adjudged in possession of
* [21] the tenancy, * he himself is seised of the tenancy in the right of his wife; so that for all

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all that time he shall not have the rent of his seignorie, if any day of payment of rent be incurred in the mean time; *tamen quære*; &c.

46. A feme covert may be a disseisor M. 8 H. 6.
notwithstanding that her husband do not assent to the same; and the husband shall be charged with the damages in assize brought against him and his wife. But if the husband disseise another man to the use of his wife, and the wife agree unto the same, yet the freehold shall not be said in her. And to this purpose, there is a difference when the wife hath right of entry, or title of entry into any land, and when not. And therefore, if a sole woman be disseised, and she take husband, and the husband enter, now by this entry the freehold shall be adjudged in the wife, because she had a right to enter. E. 12 E. 4.

47. And if a woman sole enfeoff a stranger by deed indented upon condition, the condition is broken, the woman takes a husband; the husband enter upon the feoffee; by this entry, the freehold shall be said to be in the wife, because that she had title to enter. And it is called title of entry, because that she cannot have a writ of right against the feoffee; for she hath departed with her right by the feoffment, which she cannot bring back without entry, which ought to be for the condition broken, &c. And in the case of disseisin, she had right of entry, in so much as she might before the coverture, or she and her husband might after the coverture, have a writ of right against E. 44 E. 3. 9.

* [22]

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against the disseisor, &c. And an infant may be grantee, lessee, obligee, resignee. And an infant of the age of discretion may be a disseisor by his actual entry.

T. 12 E. 3.
8.

48. But if *J. S.* disseise a stranger unto the use of an infant, the freehold shall not be in him before his agreement. But if an infant hath right, or title to enter into an acre of land, and a stranger enter to the use of the infant, now the freehold shall be said to be in the infant before his agreement. And so shall it be of a man of full age. And a man attainted of felony, murder, or treason, may be grantee; and a clerk convict may be grantee; and a man imprisoned may be grantee, &c. and the king's villain may be grantee; and an alien may be grantee. And a man outlawed in a personal action may be grantee, and a bastard may be a grantee, or a purchaser; but a bastard cannot be heir, nor have heir without issue of his body begotten.

Aff. 13 E.
1. 28.

H. 2 E. 3.
16.
Inst. 243.
b.

M. 6 E. 3.
54.

49. But if a bastard eigne who is *mulier* in the spiritual law, continue possession in lands or tenements as heir to his father all his life time, and die without interruption of his possession, his issue shall hold the land for ever against the *mulier*; and if such a bastard enter into an acre of land after the death of his * father, of which acre his father died seised in fee, and the bastard doth give the same acre in tail to hold of him and his heirs by twelve-pence, and dies seised of the reversion without interruption, this dying seised shall make his issue able in law to hold the land

* [23]

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land against the *mulier*, if such a bastard eign enter after the death of his father into land M. 14 E. 2. whereof his father died seised in fee, and is im- 16. pleaded of the same land, and vouch, &c. and the vouchee enter into warranty by force of the lien made unto his father and his heirs, and process continueth until the demandant hath judgment to recover against the bastard, and the bastard hath judgment to recover over in value against the vouchee, and either hath execution against the other, and the bastard dieth seised of the land which he had in execution; *quare*, whether the *mulier* shall falsify this recovery, &c.

50. If a man hath issue two daughters, E. 2 E. 2. whereof one is a bastard by our law, and 19. *mulier* by the spiritual law, and dieth seised of one acre of land in fee, and both the daughters, that is to say, the bastard and the *mulier* enter into the same acre and occupy M. 21 E. as one heir to their father, and the bastard 3. 34. dieth seised without interruption, it is said, 8 Rep. that her issue shall have the half of the acre 101. b. as heir to his mother; *tamen quare*, because the other sister did enter.

51. And know, that an Abbot may be * gran- * [24] tee, and Dean and Chapter, Mayor and Com- E. 5 H. 7. monalty may be grantees; but a Monk or 25. Frier profess'd, &c. cannot be grantees if he M. 19 H. be not Sovereign of the house: But he may 6. 25. be executor with the assent of his Sovereign; and he may be farmer to our Lord the King. A man of unsound memory may be grantee; and divers other persons may be grantees, who are not here specified.

52. It

G R A N T S.

Co. Copy. 52. It is now to shew, by what names
 §. 35. grantees may be. And as to that, know,
 M. 19 E. that there ever ought one to be named in the
 3. 45. beginning of the grant, who may take by
 M. 27 E. 3. force of the grant, otherwise the grant is no-
 87. thing worth. And therefore, if a man grant
 H. 32 H. annuity unto the right heirs of *John at Stile*,
 6. 99. and *John at Stile* be living at the time of the
 T. 1 H. 7. grant, the grant is nothing worth; for there
 31. is not any such person at the time of the
 E. 11 R. 2. grant; for *John at Stile* he cannot properly
 46. have an heir during his life. But if a rent
 charge be granted unto *J. S.* during his life,
 the remainder in fee to the right heirs of
T. K. and *T. K.* be living, and the deed is
 delivered unto *J. S.* now the remainder is
 good, conditionally, *scil.* if *T. K.* be dead
 when the remainder falls, and hath heir,
 then is it good, otherwise not. And so, if
 land be leased for life, the remainder to the
 right heirs of *J. S.* who is alive at the time
 of the lease, &c. And the reason is, because
 that there is one named in the lease who may
 take immediately in the beginning of the
 lease.

* [25] * 53. But if a rent be granted for life
 unto the right heirs of *J. S.* who is alive,
 the remainder to *T. K.* now all the grant is
 void, because there is not any person who
 may take immediately; and the remainder
 cannot be good, but in respect of the parti-
 cular estate, if not in special cases; and so,
 &c. And if a man seised of a rent charge
 in fee, grant the same rent unto a stranger
 for life, and the tenant of the land attorn,
 &c.

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Ec. and afterwards by another deed the grantor grant the reversion of the same rent unto the right heirs of J. S. who is alive, this H. 2 E. 3. grant is void, because that there is not any 1. person who can take: But if J. S. had been dead at the time of the grant of the reversion, then the grant had been good; and so know, that these words (right heirs) may be the name of the grantee.

54. And if J. S. have issue two sons, and M. 30 E. 3. a rent is granted unto the first son of J. S. 18. and not by any other name, it is a good grant H. 2 E. 3. if the deed be delivered. But if J. S. hath 1. not any issue, and a rent is granted unto him 1 Inst. 3. a. who shall be the first issue of J. S. whether it be son or daughter, this grant is void; 39 Aff. pl. causa pater. 20.

55. And in ancient time, a grant made E. 33 H. 6. *Abathie beatæ Mariæ, Ec. Et Monachis ib. 23.*

Deo servientibus had been good; so had it H. 40 E. been of a grant made *Deo & Ecclesiæ* of 3. 98.

such a place. But such grants are not good at this day, because there is not a person named who can take by force of the grant.

And a * grant made to such an Abby, and * [26]

to the Sacrist of the same Abby, is void at this day. And so it is if a grant be made to H. 40 E. 3. such an Abby, and to three or four Monks 98.

of the same Abby, although their names be T. 12 H. named, Ec. for that they are dead persons 7. 27.

in law. But a grant made unto the Churchwardens of such a Church, without naming 1 Inst. 3. a. of their names is good. But a grant made E. 20 E. 4. unto three or four of the Parishioners of the 2.

Parish of St. Mary in such a place is not good: M. 12 H.

But 4. 3.

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But a grant made unto the Bishop of *Winchester* without other name is a good grant ;
 4 Inst. 297. and a grant made unto the next of the blood
 of *J. S.* is a good grant.

30 Aff. pl. 56. If a rent be granted unto *J. S.* for
 47. life, the remainder in fee unto him who shall
 Co. Copy. first come at *Pauls* the next day in the morn-
 §. 35. ing, this remainder is good upon condition,

viz. if *J. S.* do not die before the time, and
 also if one come to *Pauls* the next day in the
 morning, and if he who first come be not a
 Monk, or other person who is disabled to
 take by the grant. And so it shall be, if
 the remainder be granted unto him who *J. S.*
 shall name within three days, &c. But if
 a rent be granted unto *J. S.* or *J. D.* this
 grant is void for the uncertainty of the
 grant, for the deed is in the disjunctive,
 &c. and the delivering of the deed unto
J. S. cannot make the grant to be good
 unto him ; for a rent cannot pass without
 deed, then delivery * of the deed, cannot
 * [27] cause a deed that is void to take effect.

57. Now is to shew, What things may
 be granted or given without deed, and what
 not. And as to that, know, that all chat-
 tels, reals or personals, may be granted or
 given without deed, if not that it be in
 special cases. And therefore, if a man give
 unto me his horse or cow, or a bow, or a
 lance, or other such like thing, such gift is
 B. 15 E. 3. good by word. And if a man give unto me
 14. by word his corn growing upon the land, it
 is good. And if a man give unto me a tree
 growing upon his land, it is good without
 deed.

58. But

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58. But if tenant in tail give unto me a tree growing upon the land, and dies before that I have cut down the tree, and his issue in the land where the tree is growing, if I cut down the tree, he shall have an action of trespass; because that the tree is annexed unto the freehold, and by the gift comes of the nature of the land: But otherwise it shall be, if the donor of the tree had been sole tenant of the land in fee-simple in his own right.

59. But if tenant in tail give corn growing upon the land unto me, and die before that I have severed the same from off the land, yet I may afterwards sever the corn and take it; for that the executors of the tenant in tail should have had it.

* 60. If guardian in knight's service be of the body and land, he may grant the wardship of the land without deed; because it may pass by livery of seisin. And as to the body, some are of opinion, that it may be granted without deed; for they say, it is but a chattel; and the executors of the guardian shall have the body. But that seems to be but little reason; for if a rent charge be granted unto a man for years, and he make his executors and die, his executors shall have the rent; and yet it cannot pass without deed. But it seems, that the wardship of the body shall not pass without deed; for it doth not properly lie in livery of seisin, no more than a villain in gross. And a man shall have a writ of right of ward of the body, and in the writ of *non-tenure* is a good plea, as unto

H. 18 E. 4.

I 21.

E. 18 E.

4. 6.

E. 10 E. 5.

* [28]

H. 12 E.

3. 59.

M. 22 R.

2. 937.

1 Inst. 85.

M. 10 H.

6. 12.

C

the

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the body; and in the same writ voucheth lieth for the body; which prove, that it is no personal thing; so that it seemeth, it cannot be granted without deed; *tamen quære.*

E. 10. E.
3. 4.

61. If a man seised of an acre of land, lease the same unto a stranger for life, the remainder to *J. S.* in fee, this is good without deed; because that it passeth by livery of

M. 11 H.

4. 3.

H. 8 H.

6. 33.

seisin: But the reversion of one acre of land cannot be granted for life in tail, or in fee, without deed: But the reversion of one acre of land may be granted for years without deed, *&c.* But a rent common in gross, advowson in gross, and villain in gross, cannot be granted for years, for life, in tail, or in fee, without deed, if not in special cases; so is it of estovers in gross.

* [29]

62. But an use may be sold without deed; and yet it shall descend to the heir of *cestuy que use*, if it be an inheritance in him; the reason is, because the sale is but a contract, and a house or land may be sold without deed, *&c.* And if *cestuy* give use of a reversion, wills that his executors shall sell the rever-

M. 19 H.

6. 24.

M. 11 H.

4. 3.

H. 21 E.

3. 1.

E. 21 H.

7. 21.

M. 9 H.

4. 47.

sion and dies, his executors may sell the reversion without deed. And a rent may be granted by one coparcener unto another upon partition without deed. *Quære*, if the parson of a church may grant the tithes of his parsonage for years rendring to him rent, without deed, some seem that he cannot; for they say, that notwithstanding that when tithes are severed, they are but chattels personals; yet to the parson of the church they are as his freehold, *&c.*

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63. If lord and tenant be of arable lands by fealty, and the service to render the tenth sheaf before the land shall be sowed, the lord cannot grant this service for years without deed; and yet when they are severed, they are but personals: But the parson of the church may take his tithes when they are severed from the tenth part, &c. But the lord cannot take such services when they are severed, without the assent of the tenant, &c. And there is a writ *de advoca. decim.* &c. as appeareth by the statute of *West 2. cap. 5.* which beginneth, *De advocacionibus Ecclesiarum, &c.* in the end, &c.

64. A body politick, as a Mayor and Commons, cannot make a lease for years of lands, whereof they are seized in the right of their corporation without deed; the same way is of a gift of chattels personals, *namque alienandis, &c.* But a lease for years made by an Abbot is good without deed, during the time that he is Abbot; and a gift of chattels personals made by an Abbot is good for ever without deed: And also his successor shall be bounden by a recognizance made by him: But otherwise it is of a deed intitled, &c.

65. Now is to shew of things to be granted or charged: And as do that know, that it is a common learning in the law, that a man cannot grant or charge that which he hath not: And therefore if a man grant a rent charge out of the manor of *Dale*, and in truth he hath not any thing in the manor of *Dale*, and after he purchase the manor of *Dale*, yet he shall hold it discharged, &c.

* [30]

M. 37. B.
6. 3.
T. 9 H.
6. 25.
M. 14 E. 1.
Abbe 4.

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H. 14 H. a man cannot charge a right; for it shall be a
 4. 31. good plea for him to say against such grant
 M. 9 H. by matter *in fact*, that he had not any thing
 6. 25. in the land at the time of the grant: But in
 H. 10 H. such case, if the grant had been by fine ex-
 6. 12. ecutory, the law is contrary.

31 Aff. pl. 66. And therefore, if a man grant the
 24. reversion of an acre of land where * he hath
 * [31] nothing in the land, by fine executory; and
 afterwards he purchaseth the reversion, now
 the grantee shall enter when the reversion
 doth fall, or shall have execution thereof by

M. 11 H. a *feire facias*. But if two men join in a
 4. 1. grant of a reversion by writing, and one of
 them hath nothing in the reversion, but the
 whole reversion is in the other, and the par-
 ticular tenant attorn; it shall be only the
 grant of him that had the reversion; but if
 the grant had been by fine it should have
 been otherwise.

M. 7 E. 67. If lord and tenant are of three acres
 25. of land by fealty and twelve pence; and the
 lord grant the services of a third acre unto a
 stranger, it is a void grant, notwithstanding
 that it be by fine. If husband and wife hold
 one acre of land jointly of J. S. for their
 H. 31 E. lives, and J. S. grant the reversion of the
 3. 93. acre of land which the husband solely holds of
 him for life, and he solely doth not hold any
 part of him, this grant is void.

68. But if a man grant the reversion,
Omnium tenentium suorum, tam liberorum,
quam maritorum, qui tenent ad terminum vite
 M. 5 E. 3. *et huiusmodi*, by this grant all the reversions
 34. which he hath shall pass with the attornment
 of

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of the tenants, as well as if the tenants had been rented or named. And if lord and three jointenants are, and the lord grant the services of one of them unto a stranger, this grant is void, notwithstanding * that the same tenant attorn and survive his companions, for attornment cannot make a bad grant good; but otherwise shall it be by way of release. 14
M. 7 E. 4.
25.
[32]

69. And therefore, if lord and two jointenants are, and the lord release all his right unto one of them, this is good, and shall enure unto them both; for one of them only doth not hold of him; and it shall be prejudicial to no person that the services shall be extinct by the release, but unto the releasor himself. And always a deed shall be taken strong against him who made the deed, &c. If lord and tenant be of three acres of land, one white acre, and two other acres, the lord grants unto the tenant by deed, that he will not distrain in white acre for his rent and services, this grant shall not enure to such intent to determine the feignory in any part, but shall enure by way of covenant; so that if the lord distrain in white acre for his services, the tenant shall have an action of covenant.

70. If a man hold an acre of land of *J. S.* by fealty and suit, as of his manor of *Dale*, and *J. S.* is also seised of another manor called *T. and J. S.* grant unto the tenant, that he shall do his suit at his manor of *T.* this grant shall not determine the suit at the manor of *Dale*. And if *J. S.* in the same

GRANTS

M. 7 E. 4. *land had granted unto his tenants, that he shall*
 25. *give unto him yearly twelve pence for his*

M. 20 H. 6. *first; * this grant shall not determine nor*

6. 2. *alter the tenure;*

* [33] 71. But if lord and tenant are of two
 1 Inst. 149. acres, &c. and the lord release unto the

tenant all the right which he hath in one acre
 of the same land, it is a determination of the
 whole feignory: And to this purpose there is
 a difference between a release *in fact*, and a
 release in law: For if the lord had purchased
 one of the acres in fee which are holden of
 him, that is no determination but of the rate
 of the services which are annual and sover-

4 Aff. pl. 5. *service. But if the annual services be in-*

34 Aff. pl. *tire, as a horse, a hawk, &c. then all the*

15. *annual services are gone by the purchase; but*

M. 40 E. *if one of the acres descend unto the lord,*

3. 40. *then if the annual service be intire, then shall*

he have the intire annual service out of the

remainder of the tenancy. But if it was several,

Avowry *as rent, &c. then it shall be apportioned ac-*

206. *cording to the rate of the land: But if the*

lord disseiseth his tenant of part of the te-

nancy, the whole feignory is suspended. For

a feignory shall not be suspended *in parte*, and

in esse for other parcel to every intent *free*

or *several* in one person; if not in special

M. 9 E. 4. *cases; but a feignory may be determined*

1 H. 6. 1. *in parte; and in esse for other parts several*

15. 5. *times, &c.*

M. 7 H. 6. 72. If a man hath a rent charge of two

4 30. *shillings issuing out of black acre, and hath*

* [34] *no more rent, and he reciting * by his deed,*

where

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where he hath a rent charge of two shillings issuing out of black acre and white acre, grant the same rent unto a stranger, this is a good grant to charge black acre with attornment of the tenant. And if a man hath two shillings rent charge issuing out of black acre and white acre, and reciting by his deed, whereas he hath two shillings rent charge issuing out of white acre, grant the same rent unto a stranger, this is a good grant with attornment, &c. for the whole rent is issuing out of every acre, and out of every parcel thereof, &c.

73. If three coparceners be of a seignory in gross, and one grant his part unto a stranger, this is a good grant with attornment of T. 5 E. 3. the tenant, &c. If tenant for life be of three³¹ houses, and four acres of lands, and he in the reversion of two houses and two acres of land, and the tenant attorn, this is a good grant; for such reversion the grantor had. But in that case the thing granted is uncertain. And as unto that, know, that of every thing uncertain which is given or granted, election remains to him to whose benefit the grant or gift was made to make the same certain, if not that it be in special cases.

74. And therefore, if a man have five^{Inst. 145.} horses in his stable, and he giveth unto me^{a.} one of his horses in his stable, now I shall^{M. 9 E. 4.} take which of the horses I will. And if a³⁹ man grant unto me twenty shillings of rent^{E. 13 E. 3.} charge, or forty shillings of rent charge,²⁷ I may distrain for which of these rents I will,^{Co. Copy.}

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but I shall not have both. So shall it be, if rent or common be granted, &c.

Register
171. b.

75. And if a feoffment be made unto a man of two acres, *scil.* of one acre in tail; and of the other in fee, and doth not shew in certain in which acre the feoffee shall have fee, nor in which acre he shall have an estate tail, and a *præcipe* is brought against the feoffee of both acres, and he lose by default, and afterwards he brings a writ of right of one acre, and that is put in view, and brings *quod ei desorciat* of the other acre, and that is put in view, &c. It is at the determination of the will of the feoffee, in which acre he will have fee, and in which acre he will have an estate in tail, &c.

29 Aff.

76. If a man seised of two acres, lease them for term of life, the remainder of one acre unto a feme sole, and doth not shew in certain in which acre, and afterwards the woman takes husband, the tenant for term of life dieth, and the husband enter into one acre, and thereof doth enfeof a stranger by metes and bounds, and dieth: Now the wife shall not enter into the other acre, and chuse that; for it was her folly to take such a husband who would do such act when the remainder fell; forasmuch that the title to the remainder did begin by the grant which was before the marriage, &c.

* [36]

77. If a man were enfeofed of two * acres, of one in fee, and of the other for life, and doth not shew in which acre he shall have fee, &c. and the feoffee doth enfeof a stranger

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ger of one of them by metes and bounds, this is no forfeiture; *causa patet.*

78. If a man be enfeoffed of two acres, of one in fee, and of the other in tail; and the feoffee hath issue, and doth enfeoff a stranger of an acre, and dieth, his issue shall not have *formedon* against the feoffor of this acre; for when his father made a feoffment of one acre, this feoffment was not of one acre severed from the other acre; so as one acre is as advantageous for the issue as the other acre; for the feoffor and he shall occupy all in common: And notwithstanding that the feoffment had been made in severalty, that is to say, by metes and bounds of one acre; the issue shall be bounden thereby; forasmuch as he cannot inherit, if his father accept not of the gift; and this feoffment shall not declare his will from the time of the gift.

79. And therefore, if a man grant a rent charge in tail, and the grantee bring a writ of annuity and recover, his issue shall not have a *formedon* of the rent granted, *Gr.* If a yearly rent be granted issuing out of the Church of St. Peter, the Church of St. Peter and St. Paul, is not charged by such grant; for they cannot be intended one Church.

80. If two jointenants in fee are of one acre of land; and lease the same acre unto a stranger for life; and the lessee granteth his estate unto one of his lessors, it seems unto some men, that as unto one moiety it shall enure by way of surrender; and as unto the other moiety, it shall enure by way of grant; and their reason is, because that the grantee

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had, but one moiety of the reversion of the land in right, in so much as if he had granted the whole reversion unto a stranger, and the lessee attorn, yet but a moiety passeth from him; and by the like reason, the grant of the lessee shall enure by way of surrender, but of the moiety, &c.

E. 5 E. 3.
19.

81. And if tenant for life be of one acre of land, out of which acre a rent is issuing in fee, and the tenant for life purchase the same rent by grant, this grant is good to take effect in the heirs of the tenant for life; and yet he had possession in the whole land at the time of the grant, &c. And if lord and tenant be, and the lord grant his seignory unto the tenant and to a stranger, this grant shall enure by way of extinguishment for one moiety, *scilicet*, to the tenant; and for the other moiety, it shall enure by way of grant unto the stranger, &c.

E. 35 H.
6. 41.

82. And if tenant for life grant his estate unto one of the lessors, it seemeth unto some, that this shall enure by way of surrender for the whole; and their reason is, because that every of the lessors is * seised of the whole, and of the whole reversion; and the grant of the estate of the particular tenant cannot take effect by way of grant without livery of seisin; and the grantee cannot take livery of seisin of the same land, because he hath the reversion in fee of the whole land in him immediate to the same particular estate, and in his own right. And therefore, if lessee for life grant his estate to him in the reversion in fee in his own right, and immediate to the particular

* [38]

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particular estate, this grant shall enure by way of surrender, &c. But if a woman who is sole seised of one acre of land in fee, lease the same acre for life, and the woman taketh husband, and the lessee granteth his estate unto the husband, that shall enure by way of grant; *causa patet*.

83. And if a man seised of an acre of land lease the same acre for life, the remainder for life unto a stranger, and the lessee grant his estate unto his lessor, that shall enure by way of grant; and yet the grantee is seised of the whole reversion at the time of the grant; but the same reversion is not to take effect immediately after the estate of the lease determined, if he in the remainder be living, as he is at the time of the grant, &c. And if lord and two jointenants are in fee, and the lord grant his seignory to one of the tenants, this grant shall take effect by way extinguishment for the whole, &c. And to some it seemeth it shall enure by way of grant for the * whole; and they say, that otherwise [39] the lessee shall not have liberty to depart with his estate to one of his lessors, &c.

84. And therefore, if three jointenants are of one acre of land, and one of them release all his right unto one of his companions, now he shall be in, in the *Per*, for the third part of which the release is made, &c. And it hath been holden, if the lessee for life grant his estate unto his lessor and a stranger, that by force of this grant they are jointenants. H. 33 H. 8. M. 7 H. 6. 3.

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85. And if lessee for life be, and the reversion descend unto two coparceners, and one of them take husband, and the lessee grant his estate unto the husband and wife, the same shall enure by way of grant for the whole, &c. And know, that a right shall not pass by way of grant if not by extinguishment, &c. And by release it may be extinguished.

T. 21 E. 4.
2.
M. 6 H.
7. 8.

86. And therefore, if the disseisor of one acre of land grant his right unto a stranger, it is nothing worth; but if he release all his right unto the disseisor, it is good, if it be by deed. And if he confirm the estate of the disseisor, the confirmation is good. And if obligee and obligor be, and the obligee give the obligation unto a stranger, the gift availeth nothing as to bring an action in the name of the donee; for a thing in action cannot be given; but the donee may cancel the obligation, or give the same unto the obligor, &c.

* [40] 87. If annuity be granted by the * grantor and his heirs unto a stranger and his heirs, it seemeth to some, that the grantee may grant it over, because it is an inheritance in him; *tamen quare*. For the grantee hath not any remedy for to have it but by way of action. *Quare*, If the annuity had been granted for term of life, &c. If a man seised of an acre of land lease the same acre for life, the remainder unto the right heirs of J. S. who is living, this remainder takes effect presently; but is in no person to grant,

H. 21 E.
4. 14. 88.
M. 41 E.
3. 71.
H. 21 E.
4. 20.
M. 37 E. 3.
87.

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grant, because it is in abeyance, viz. in the consideration of the law, &c.

88. But if tenant in tail be of an acre 17 Aff. p^h. of land, the remainder of the same acre unto 60. his right heirs, he may grant this remainder; yet it is not executed in him, &c. If lord and tenant be, and the tenant lease the tenancy unto the lord for life, the lord may E. 5 B. 3. grant his seignory unto a stranger; and yet 16. it is in suspense at this time, &c.

89. But if lord and tenant be, and the tenant infeoff the lord of the tenancy upon condition; the lord may grant his seignory; and yet it is not determined nor extinguished; for if the condition be broken, and the tenant enter, the seignory is revived: But if before the entry of the tenant, the lord infeoff a stranger of the tenancy, and then the first feoffor, that is to say, * the tenant enter, the seignory is not revived, but is determined; because that the lord doth depart with the tenancy to his feoffee discharged of the seignory. And so in the same case, the lord may depart with his seignory by such means, &c.

90. A Parson of a Church may grant his H. 38 B. 3. tithes for years, and yet they are not in him 6. for a time. But if lord and tenant be, the E. 24 B. 3. lord cannot grant the wardship of the heir of 25. the tenant living the tenant. But if a man M. 30 H. 6. grant unto me all the wool of his sheep for seven years, the grant is good, &c.

91. If land be leased unto me for years, the term to begin at the feast of *Easter* next ensuing; and before the feast I grant my
term

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term unto a stranger, it is a good grant. And if a rent be granted unto me, and before I be seised thereof, I grant the same rent unto a stranger, the grant is good.

92. If he that hath a reversion depending upon an estate for life, grant a rent charge issuing out of the same, the grant is good to charge the land after the death of the particular tenant, &c. If a man sell unto me goods, and I suffer them to be in his possession, and a stranger takes them out of his possession, and I grant or sell them unto the stranger, it is a good sale, or grant, &c.

* [42] * 93. But, if a man take my goods out of my possession, and sell them unto me in open market, the sale is void; for it cannot be good, if not that the property be thereby altered, and that cannot be; for before the sale, and at the time of the sale, the property was in me; and then if it shall be altered by the sale, it ought to be altered in me; and that shall be impertinent, for then it should be altered out of me immediately in me, &c.

94. If a villain be granted for life, the grant is good: And in the same case, if the villain purchase lands in fee, and the grantee for life enter into them, as into lands purchased by his villain, he shall keep the lands unto him and his heirs; and yet he hath not estate in the villain, but for life: But the reason is, because that he hath the same as a perquisite, &c. And to that purpose there is a difference when a man shall have one thing in respect of another thing; and when

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in the place of another thing, and when by reason of another thing.

95. And therefore, if a man lease lands for life, and the lessee do waste, and the lessor grant the reversion unto a stranger, and the lessee attorn, the grantee shall not have an action of waste, for this waste, because it was not to his disservice since; and the grantor shall not have an action of waste, because the reversion was out of him, &c. And if lord and tenant be, and the tenant alien in mortmain, and the * lord grant his seignory * [43] unto a stranger, and the tenant attorn, now the grantor shall not enter for mortmain, notwithstanding that it be within the year after the alienation, because that the seignory in respect of which he is to enter is out of him.

96. If lord and tenant be, and the lord grant his seignory for life unto a stranger, and the tenant attorn, and die without heir, and the grantee enters for escheat, he shall not have a greater estate in the tenancy than he had in the seignory, because the tenancy cometh in lieu of the seignory; and so shall it be of lands recovered in value by voucher to his purpose; *mutatis mutandis*, &c.

97. If a man seised of a manor unto which an advowson is appendant in fee, lease the same manor unto a stranger for years, or for the life of another man, and the Church become void during the term, and the years T. 4 H. 7. expire, or he for whose life it was die before the six months pass, and before the lessee hath presented; yet the lessee shall have the present-

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presentment because he is to have the same as a perquisite, by reason of that manor. And if feoffee of one acre of land upon condition be, and the feoffor enter and do trespass, and afterwards the condition is broken, and the feoffor enter, yet the feoffee shall have an action of trespass against the feoffor, notwithstanding * that he hath not the land wherein the trespass was done; *causa patet, &c.*

* [44]

98. If *cessuy que use* be of a reversion, he may grant the same as well as if he were in possession; and that by the statute of *Richard* the third, made in the first year of his reign, *cap. 1.* And by the same statute, *cessuy que use* of lands or tenements may charge them by his grant: *Vide* the Statute. And a man may grant common or rent, notwithstanding that a stranger takes the rent, or useth the common, for he shall not be out of possession of them, but at his pleasure, &c.

1 R. 3.
c. 1.

99. And know, that all such things which are granted unto a man by reason of trust touching the person of the grantor, he cannot grant them over, if not in special cases, unless in case that it be granted to him and his assigns.

T. 19 H.
8. 10.
T. 11 E. 4.
2.

100. And also, if it be an office of trust concerning the person of the grantor, he cannot use the same by deputy, if not in special cases, unless in case that the grant be so made. An assignee is always such a person who doth occupy in his own right; and a deputy such a person who doth occupy in the right of another.

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101. If a man grant unto me to be his carver, or sewer, or chamberlain, &c. I E. 10 E. 4. cannot grant the same over, or use them by deputy, if the grant be not so made as before is said. And so is it of other like offices, &c. Also the Lord Chancellor of England, Justices of * the King's Bench, Justices of * [45] the Common Pleas, and Barons of the Exchequer, cannot grant their offices over unto other persons, or use them by deputy, &c. And if annuity be granted unto me, *pro com- H. 21 E. cilio in posterum impendendo*, I cannot grant it 4. 83. over, if it be not granted to me and my assigns. And, *quære*, whether I may then grant it. 2 Inst. 122.

102. If a man by grant have common of pasture for cattle without number, and his grantor grant common of pasture for cattle without number in the same lands to another man, the second grant is not good against the first grantee; because a man by his grant shall not prejudice him who hath an elder title; but the same grant is good against the grantor himself. H. 18 H. 6. 30.

103. If two jointenants be of a carve of M. 44 E. land, and one of them grant common of 3. 13. pasture for cattle without number to be taken in the same land to a stranger, the grant is void against the other jointenant as before is said. But it is a good grant against the grantor himself. And grantee for life of com- 33 Aff. pl. mon of pasture for cattle without number, 3. or of a corody uncertain, cannot grant the Shep. Dead same over, if the grant be not to him and 238. his assigns. But grantee of common of pasture

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pasture for cattle certain, or of a copyhold certain, or of an advowson, or of a villain, or rent, or the like, may grant the same over, notwithstanding the grant be not * to him and his assigns, unless there be a special proviso in the grant, that he ought not so to do, &c.

104. Common of pasture appendant cannot by grant or otherwise be severed from the land to which it is appendant, if it be in offe. So is it of estovers granted to be burnt in a house certain; *mutatis mutandis*.

T. 26 H. But a villain regardant unto a manor, and 8. 4. advowson appendant to a manor may be severed from the manor unto which they are appendant, and made in gross by grant, &c.

Cro. Jac. And it is a common rule in law, that if 15. the estate be expressed in the grant, the 7. Aff. pl. grantee shall have an estate for life. But 4. yet if there be such words in the grant which may declare the will of the grantor, and his will is not contrary to the law, the estate shall be according to his intent and will, if not in special cases.

105. And therefore, if two marks of annual rent be granted unto a man until ten marks are levied, the grantee shall not have an estate in this rent but for five years; for the intent of the grantor cannot be otherwise; and the words in the grant are sufficient to satisfy the same intent, &c. And if a man seised of a rent issuing out of land which is devisable, devise the same rent unto a stranger until his heir, viz. the heir of the grantor be of full age, and the grantor die,

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did, his heir being of the age of sixteen years; 3 Rep. 19.
 the devise hath an estate in * the rent but * [47]
 for five years; *Et. tamen quere.*

106. If a man seised of a carve of land
 in fee, grant ten shillings rent issuing out
 of the same land unto an Abbot, and a se-
 cular man, it shall enure as several grants,
 and either of the grantees shall have ten
 shillings, because that the grant shall be taken
 strong against him that made it, and for the
 benefit of the grantee; *tamen quere.* The
 same law is; *mutatis mutandis.* If two se-
 nants in common of a carve of land join
 in a grant of a rent charge of ten shillings
 issuing out of the same land unto another
 man, *Et.*

107. But if two tenants in common of
 a carve of land, lease the same carve unto
 a stranger for life, reserving to them ten
 shillings, this shall take effect as several
 leases; and either of them shall have but
 five shillings; for the reservation is their
 own act, and they shall not have more than
 they themselves have reserved; *Et.*

108. If a man grant unto me common
 of pasture for ten kine in his lands in such
 a town; yet I shall not have common, but
 in his land commonable in the same town;
 and yet the grant is general in his lands in
 the same town: But the reason is, because *Et. Et.*
 he doth not grant but only common of 43.
 pasture; and for cattle certain and com-
 monable; so as the grant shall not extend
 but unto pasture * lands. But if common * [48]
 of pasture be granted unto me, for all man-
 ner

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ner of cattle, I shall not have common for hogs, &c. Also if common of pasture be granted unto me for my cattle, I shall not common but with cattle commonable; for a grant shall have a reasonable construction, &c.

M. 9 H. 109. If a man grant unto me common of
6. 36. 12. pasture for my cattle, whensoever his cattle shall go, and he occupy and manure an hundred acres of land with his cattle, and afterwards he hath no cattle, yet I shall have common in the hundred acres, &c. But if common of pasture be granted unto me for my cattle, whensoever the cattle of the grantor shall go, &c. in this case the grantee shall not have common, but when the grantor useth common with his cattle, &c.

110. If a man hath a fish pond, and he grant and sell unto a stranger all the fish in his pond, the grantee cannot dig the land to make a trench, because he may take the fish with nets and other engines; so that always a grant shall have a reasonable construction. But if a man have a wood, and he grant all the oaks growing in his wood to a stranger, the grantee may cut down the oaks, and come upon the land of the grantor with carts to carry them; for otherwise he cannot conveniently have them, &c.

* [49] 111. If a man give me leave to make * a
M. 9 E. 4. trench for such a spring in his lands unto my
35. manor, so that I may lay a pipe in the land to convey the water to my manor in a conduit, if afterwards my pipe be broken, I may dig his land to amend the pipe, &c.

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112. Now is to shew, what things shall pass by the grant of other things. And as unto that, know, that all things which are incident unto others shall pass by grant of those things to which they are incident, if not that it be in special cases. And therefore, if lord and tenant be by homage and fealty, and the lord grant the homage unto a stranger, and the tenant attorn, by this grant the fealty shall pass as incident to the homage, &c.

113. And if lord and tenant be by fealty and rent, and the lord grant the rent unto a stranger, and the tenant attorn, by this grant the fealty shall pass as incident to the rent: But in the same case, if the lord grant the rent (saving to himself the fealty) the grantee shall have the rent as a rent seek, and the fealty doth not pass, &c. If a man seised of one acre of land, lease the same acre unto a stranger, reserving rent, and grant the reversion of the same acre unto another stranger, and the lessee attorn, by the grant of this reversion, the rent shall pass as incident to the reversion: But in the same case, if the grantor of the reversion in his grant, save unto himself the rent, the rent shall not pass, &c.

114. If a man have a reversion in fee in ten shillings of rent issuing out of lands in Dale, and also hath the reversion in fee of an acre of land in the same town, and he grant all his lands and tenements in Dale unto a stranger, by this grant the reversions shall pass: But if the grantor had an annuity in

1 Inst. 151.

b. 152. a.

29 Aff. pl.

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T. 44 E. 3.

20.

M. 29 H.

6. 24.

1 Inst. 150.

* [50]

M. 34 H.

6. 6.

T. 16 E. 3.

55.

M. 38 E.

3. 36.

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- in the same town it shall not pass by such grant, &c. If a man hath a reversion in a mill, and he grants *totum molendinum suum* unto a stranger, by this grant the reversion of the mill shall pass, &c. But in the cases of grants of reversions, there ought for to be
- Aff. 30 E. attornments; otherwise they shall not pass,
1. 8. 9. if the grant be not by matter of record, &c.
- M. 10 E. 4. 115. If a man give and grant unto me
14. *omnia bona & catalla sua*, his charters concerning his lands shall not pass, by these words, &c. If lord and tenant be by homage, fealty, and rent, and a stranger bring a *præcipe quod reddat* of the rent against the lord, and recover, by this recovery the homage is not recovered, but the fealty is, &c.
- T. 44 E. 3. 39. 116. If a man seised of a manor unto which an advowson is appendant, enfeoff a stranger of the manor, without saying any thing of the advowson, and without saying *cum pertinentiis*, the advowson doth pass, &c. And by such feoffment the services of the tenants which held of the manor shall pass with attornment of the tenants; for in such cases, the services are parcel of the manor, &c. And by grant of lands and tenements, advowson shall pass, &c. And if land be known by the name of the house, then the reversion of the same land may pass by the name of the house, &c. And if six acres are known by the name of a manor, then the reversion of them shall pass by the name of the manor, &c. The same law is *à converse* in these two last cases; *mutatis mutandis*, &c. By this word (*Bris*) great wood
and

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and under wood shall pass, &c. If I be seised of a manor, and a stranger grant all manner of cōvers unto me, to my manor, &c. by this grant I shall have house-bote, plow-bote, and hay-bote, &c.

C H A P. II. * [52]

D E E D S.

117. **B**ECAUSE I have shewed in the 1 Inst. 6. a. chapter of GRANTS, that there 143. b. be divers things which cannot be granted without deed, I will now therefore shew some things which are necessary concerning deeds. And as to that, know, that 1 Inst. 9. a. there are three things necessarily appertaining 171. b. unto a deed; viz. Writing, Sealing and De- 229. a. livery. First, Something shall be said concerning them; and afterwards shall be said 1 Inst. 35. b. other things concerning deeds, &c.

118. Notwithstanding, that some Kings and Princes have used to make blank Patents and Charters sealed to be delivered to divers men to write what matter soever they would in them, and that such Patents have been sufficient * warrant to the Patentees, &c. * [53] Yet if a common person seal an obligation or any other deed, without any writing in it, and deliver the same unto a stranger, man or woman, it is nothing worth; notwithstanding that

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that the stranger make it to be written, that he who sealed and delivered the same unto him, is bounden unto him in 20*l*. For in an action of debt, brought upon this obligation, he may plead that it is not his deed; *causa patet*. The same law is of other deeds; *mutatis mutandis*.

119. And forasmuch as it is commonly used to write a deed before it be sealed, and after the writing to seal it, and after the sealing to deliver the deed unto the party. Therefore, first, something shall be said of the writing of it. And forasmuch as it appeareth in the chapter of GRANTS, there ought to be grantor, grantee, and a thing granted; so in the same manner in every obligation, there ought to be obligor, obligee, and a thing in which the obligor is bounden, &c. And so shall it be of a feoffment and other deeds; *mutatis mutandis*, &c. And therefore shall be said of other collateral things not put into the deed; and when
M. 7. B. 3. the deed shall be suspicious for the manner of
56. writing of it.

1 Inst. 6. a. 120. And as to that, know, that if a deed have not any date, yet the deed is sufficient enough. And when the party takes
* [54] advantage of such a deed, he shall * add the
M. 3 H. day and place of the delivery of it. But it
4. 4. said, If the deed be dated at *London* in the
T. 36 H. county of *York*, and in truth there is not
6. 4. any such place within the same county, that
T. 12 H. this is a void deed: For the party who useth
4. 23. the deed from the place dated within the same
1 Inst. 261. deed. And if a deed bear date before time
b. of

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of memory, it is not pleadable, if it be not upon record; but the party may well give such a deed in evidence.

121. If a man bring an action of debt in *M. 2 E. 2.* the Common Pleas, upon an obligation bearing date at *Berwick*, the plaintiff shall take *Hob. 296.* nothing by his writ, because he cannot vary from the place dated in the obligation, and the Common Pleas hath not jurisdiction there. But when a deed is pleaded bearing date at such a place where the court hath not jurisdiction, if the deed be not answerable, the plea is good enough.

122. And therefore, if in a replevin the *H. 20 E. 3.* defendant avow for a rent charge in another *127.* place, then the plaintiff counts to him granted by deed bearing date where the court hath no jurisdiction, and the plaintiff maintain his declaration (as he ought) which is found against the plaintiff, the defendant shall re- *7 E. 3. 57.* torn of the cattle. And notwithstanding *11 Rep.* that a deed hath all his words, if it be rased *27.* or interlined in any suspicious place within *M. 7 E. 3.* the deed, or new letters written upon * the *75.* old letters, the deed is greatly suspicious, if ** [55]* not that it be in special cases. *M. 24 E.*

123. And therefore, if the name of the *3. 35.* grantor or grantee be rased or interlined in a *M. 45 E.* deed poll, the deed is very suspicious; so is it *3. 18.* of the thing granted, or in limiting of the *1 Inst. 225.* estate, &c. If the date of a release be rased *a.* in the place, it is very suspicious; because it *M. 44 E.* may be it was dated out of the realm. But *3. 42.* if the lines of a deed be written crooked, the deed is not suspicious for this matter.

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124. And notwithstanding that a deed poll be rased in a place which is not material, the deed is not suspicious for such matter ;
- H. 14 H. 4. 18. As if a deed of feoffment be rased in the addition of the name of the feoffee ; or if the deed comprehend *dedi & concessi*, and *concessi* is rased, the deed is not suspicious for such matter. But otherwise is it, if *dedi* be rased ;
- T. 31 E. 1. 118. for this word *dedi* comprehends the effect and force of this word *concessi*, and more. For *dedi* in a deed of feoffment comprehends in it a warranty against the feoffor, and so doth not the word *concessi*. And although that a deed poll be rased in a material place, as in the name of baptism of the grantor or grantee, if it appear that there was no writing there before, it is not greatly suspicious.
- T. 30 E. 9. 8.
- * [56] * 125. And if a man grant unto me a rent charge by deed which he hath issuing out of the land of another man, and the tenant attorn, and the grantee by his deed reciting the same grant, regrant the same to his grantor, and the latter deed is rased in the name of baptism of the grantor, yet it is not greatly suspicious, because it doth rely upon another deed, in which relies, *viz.* recital, it is not rased. *Quere*, If such a deed be rased in the date of the place, &c.
- E. 25 E. 3. 41. 126. And notwithstanding that this word (executor) be rased in the will, yet the will is good enough ; because it relies upon the register of the ordinary before whom it was proved, and that it appeareth whether they were made executors or not. And if in debt brought upon an obligation, the date of the obli-
- E. 22 H. 6. 57.

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obligation be rased, and the plaintiff shew forth an indenture of defeasance proving the obligation, the obligation is good enough. So is it of indentures bipartite, tripartite, or *M. 41 E.* quadrupartite, if one of them, or all of them, *3. 29.* be interlined or rased in a material place, they are sufficient notwithstanding the same, if so be that they do not vary in the words.

127. But if one indenture be rased in a place material, and the other indentures or indenture are not rased, and the indenture which is rased doth not agree in words in that place which is rased with them, or that which is not rased, the * indentures rased is * [57] greatly suspicious.

128. As put the case: The indentures are of bargain and sale of lands or tenements, and the indenture which remaineth with the vendee is rased, and the word which is rased is manor, and in the other indenture the word which is rased is house, and the vendor hath a manor and also a house in the same town where the lands sold do lie, the indenture which the vendee hath is greatly suspicious; and so is it of interlining, and of other the like things: And if the words which testify *H. 40 E. 3.* that the grantor, feoffor or obligor, &c. have *1.* put their seals unto the deed, the deed is in *7 H. 7.* sufficient, notwithstanding that it be sealed. *14.* And if it appear that a deed hath by me hung in the smoke, it is suspicious.

129. And it is to be known, that notwithstanding that words obligatory, or, &c. are written in parchment or paper, and obligor, or, &c. deliver the same as his deed,

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and it is not sealed at the time of the delivery, it is but escrowl, notwithstanding that the name of the obligor be subscribed, and notwithstanding that yet by the custom in ancient cities and boroughs, in an action of debt a man shall not wage his law against the Merchant's book; and yet it is not answerable by the common law, notwithstanding that it be sealed with the seal of the party, and delivered by him.

* [58]

* 130. So know, that a writing cannot be said a deed, if it be not sealed, &c. But it is nothing to the charge, whether it be sealed with the seal of the grantor or not, or by a stranger, or by the grantor, if the grantor deliver the same writing, &c. as his deed.

131. And therefore, if *John at Stile* write an obligation in the name of *Richard at Gappe* unto *T. D.* and *N. N.* and seal the same obligation with the seal of *R. Roo*, and *Richard at Gappe* take the same obligation so written and sealed, and delivers the same unto *T. D.* as his deed, now this is a good obligation against *Richard at Gappe*; *causa patet*. And so it is of all other deeds, &c.

M. 22 E.
3. 21.

132. If Abbot and Convent seal a writing with the seal of a layman, and it is said in the deed, *in cujus rei testimonium appensum est nostrum sigillum commune*, and the same writing is delivered according to the form of law, it is a sufficient deed, and shall bind the Abbot and Convent; for this seal shall be said the Convent or common seal for the time, for with their common assent they may change their common seal at what time they will.

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133. And if Abbot and Convent cause T. 11 E.
to be made a writing, in which it is said, 4. 4.
figillum nostrum apposuimus, and not *figillum*
nostrum commune, yet the writing is sufficient,
and shall bind the Abbot and Convent. But
if Abbot or Prior * seal a writing made in * [59]
his name and in the name of the Convent, T. 22 H.
without the assent of the Convent, and it 6. 4. 11
is said in the deed, *figillum nostrum commune*
apposuimus, the same is delivered by the Ab- M. 37 H.
bot or Prior, without the assent or agree- 6. 3.
ment of the Convent, this is only the deed
of the Abbot or Prior, and not of the Con-
vent; *causa patet*. And so is it of Dean
and Chapter, Mayor and Commonalty, and
such like other; *mutatis mutandis*, &c.

134. And notwithstanding that it be ne- E. 8 H. 6.
cessary that a deed be sealed, yet it is not 8.
requisite that there be for every grantor, &c,
who is named in the deed, a several piece of 27 H. 6.
wax, for one piece of wax may serve for all 105.
the grantors, &c. which are named within
the deed, if every one of them put his
seal upon the same piece of wax, or if an-
other do so for them, &c. if the words in
the deed imply so much, viz. if it be said
in the deed, *in cuius rei testimonium sigilla*
nostra apposuimus, or words to the same effect.

135. And it is to be understood, that
notwithstanding that a deed be once suffi-
ciently sealed, and the print of the seal is all
bruised, so as it doth not appear that it was
sealed, the deed is insufficient. But if there M. 17 H.
appear any print of the seal upon it, and the 6. 18.
seal remain annexed unto the deed, it is suf-
ficient.

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* [60] ficient. But if the seal be severed from the deed, notwithstanding that a print remains, the deed is insufficient. And if it * appear that the seal was once severed from the deed, after it was delivered as a deed, notwithstanding that the seal be fixed again unto the deed, the deed is insufficient.

H. 14 H. 136. And it is said, if the seal of a deed
 4. 30. be a little bruised, if it be an ancient or a new writing, and part of the seal remain upon which there is any print, the deed is good enough. But if this part which remains to the deed hath not any print, then the deed is insufficient: But if it appeareth that the piece which remaineth annexed to the deed which had any print, were once severed from the deed, and lostned by the fire, and so fixed again to the libel of the deed, the deed is insufficient.

M. 9 H. 137. And notwithstanding that a deed
 6. 37. be sufficiently written in my name, and sealed by me, and is not delivered by me, or by another by my assent, or by my agreement or commandment, the same shall not bind me for all this, while it is but an escrowl. And if I make such escrowl, and let it lie by me, and a stranger gets it, it shall not bind me, for it is not yet my deed.

M. 10 H. 138. And if I make a deed and deliver
 6. 25. the same unto a stranger as an escrowl, to keep until such a day, &c. upon condition, that if before that day he to whom the escrowl is made shall pay to me ten pound or shall give me a horse, or enfeof me of the manor of *Dale*, or shall * perform any other

* [61]

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other condition, that then he shall deliver M. 10 H.
 this escrowle unto him as my deed: In this 6. 25.
 case, if he deliver the same unto him as M. 41 E.
 my deed before the conditions or condition 3. 29.
 performed, it is not my deed *simpliciter*. But
 if the conditions or condition be performed,
 and the escrowl delivered by him after the
 conditions performed as my deed, then it
 is my deed and shall bind me; and at the
 time of this delivery, then begins it to be
 my deed, and shall not have relation unto
 the first delivery. But, *quære*, if it shall
 have relation unto the time of the condi-
 tion or conditions performed; but it seemeth
 not.

139. But if an infant make an obligation H. 27 H.
 or other writing to be written, and seal it, 6. 70.
 and deliver the same unto a stranger as an
 escrowl to deliver unto him to whom it is
 made, when the infant shall come to his full
 age, as his deed in this case if the stranger
 deliver the same at the full age of the infant,
 it is yet void; for he hath not authority to
 deliver it; if not by commandment, and
 that was void.

140. But if a sole woman deliver such H. 14 H.
 escrowl upon a certain condition, &c. and 6. 42.
 before the performance shall take husband,
 yet if the conditions are afterwards perform-
 ed, and the escrowl delivered as the deed of
 the woman, she shall be bounden thereby.
 And some men think, she shall not be
 bounden thereby; for they * say, that by * [62]
 the delivery of the escrowl by the stranger,
 as the deed of the woman, then it began

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first to take effect as her deed, and shall not have relation unto the time of the first delivery made by the woman when she was sole : Inſomuch, that if the party to whom the obligation is made, before the conditions performed, and before the laſt delivery by the ſtranger as the deed of the woman, releaſe all actions and demands unto the woman, and afterwards the bailee deliver the obligation to whom it was made as the deed of the woman, becauſe that the conditions are performed. The obligee notwithstanding this releaſe, ſhall have an action of debt upon this obligation, which proves that the laſt delivery ſhall not have relation unto the firſt delivery; and at the time of the laſt delivery, and at the time of the conditions performed, the woman had a huſband. And all obligations made by a married woman, &c. are void againſt her; and alſo it ſeemeth unto them that this marrying the huſband is a countermand in law, &c.

41 H. 4.
30.

141. But notwithstanding theſe reaſons, it ſeemeth that ſhe ſhall be bounden by the obligation; for at the time of the firſt bailment ſhe was ſole, ſo that all things done at that time were good and lawful, &c. And it is not like unto the caſe, where an infant * delivereth a writing upon ſuch a condition; *cauſa patet*, &c. And if a ſole woman covenant with me by indenture to pay unto me ten pounds at the feaſt of *Eaſter*, which ſhall be in the year of our Lord 1640. and before that day ſhe take huſband, and the coverture continues between them until the day

* [63]

D E E D S.

day on which the covenant should be performed be past, she shall not therefore be discharged of the covenant, because the marriage could not be celebrated without her assent. And he who is bounden to do a thing, or to suffer a thing to be done, cannot discharge himself thereof by his own act only, if not in special cases, and so, &c. And the woman when she was sole could not countermand the bailment as this case is, because that the obligee is as it were party and privy to the bailment of the obligation, inasmuch as he is to do and perform certain conditions which are annexed unto the bailment; and also is to take advantage by the performance of them, &c. *tamen quære*, forasmuch as the obligee was not party to the bailment, but the same was made by the woman only: But the law had been clear with the obligee, if the bailment, &c. had been made by the woman, and the obligee jointly. See the same case in the chapter of GRANTS, &c.

* 142. And it is to be known, That if * [64]
a man command a Scrivener or other man M. 9 H.
to write a deed, viz. an obligation, or other 6. 37.
deed in my name, to *T. Downe*, and he doth
so; and after I seal the obligation, and com-
mand the Scrivener to keep it until certain
indentures between me and the said *T. Downe*
containing certain conditions be sealed and
delivered. And before it is so done, the said
T. Downe takes the said obligation out of the
possession of the Scrivener, this obligation
shall not bind the obligor.

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H. 8 H. 143. But if I deliver an obligation or
6. 26. other writing unto a man as my deed, to deliver unto him to whom it is made when he shall come to *York*, it is my deed presently; and if he deliver it to him before he come to *York*, yet I shall not avoid it: And if I die before he come to *York*, and afterwards he cometh to *York*, and he delivereth the deed unto him, it is clearly good, and my deed; and that it cannot be, if it were not my deed before my death.

144. And if I deliver a writing unto a stranger as my deed, to deliver unto him to whom it is made upon condition, and he to whom it is made, gets it out of the possession of the bailee before the conditions performed, yet it is my deed and shall bind me.

M. 10 H. 145. And if the next avoidance of the
6. 25. advowson of the Church of *Dale*, &c. * be
M. 13 H. granted unto a man by deed bearing date the
4. 8. first day of *May* in the fifth year of King *Henry* the seventh, and the same deed is first delivered as a deed to the party the fourth day of *May* the same year. And by another deed, bearing date the second day of *May* in the same year, the next avoidance of the same Church of *Dale*, &c. is granted by the same grantor unto another man, and the same deed is delivered as the deed of the grantor, the third day of *May* in the same year; in this case, the last grantee shall have the next avoidance of the same Church, and not the first grantee; and yet his deed did bear date before the deed of the second gran-

* [65]

D E E D S:

tee; but it is because a deed first takes effect by his delivery, &c.

146. And in an action brought by a sole woman upon an obligation, if the release of H. 15 E. one who was her husband be pleaded, &c. 3. 93. the woman may say, that at the time of the delivery of the release, he was not her husband, &c. And the jury shall be charged to inquire of the time of the delivery, and not of the date; notwithstanding that the woman M. 12 E. 3. in her plea doth not make protestation of the Aff. pl. date, &c. And it is to be known, that he 116. who pleads a deed, and he against whom a deed is pleaded, may vary from the date of the deed in the time of the delivery. And it is said, that then it behoveth that the date be before the delivery of the deed.

* 147. And therefore, if a man be bound * [66] in a recognisance, and the recognissee grant 29 Aff. pl. unto the recognisor by his deed indented, 47. bearing date before the recognisance, that if the recognisor perform certain conditions contained in the same indentures, that then the recognisance shall be of no force. In this case, it behoveth the recognisor to take advantage of this deed by averring of the delivery of the same deed after the recognisance entered into.

148. If a man bring an action of debt M. 12 E. against me upon an obligation bearing date 6. the second day of May, and declares accordingly, &c. and I plead against him acquittance, bearing date the first day of May in the same year, I shall take advantage of this acquittance by averment; to say, that it was

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first delivered as the deed of the party after the date of the obligation, *viz.* at such a day, &c.

149. And in replevin brought by a sole woman, the defendant avows by reason of a grant of a rent charge made unto him by the woman, which grant beareth date the first day of *May*: The woman may avoid this deed, saying, that it was first delivered the tenth day of *May* in another year after; at which time she had a husband, &c. And it is to be known, that a man cannot plead the delivery of a deed before the date of it: * [67] For every deed which hath a date shall * be intended to be written the day of the date. But it is no deed before the delivery; and a deed cannot be delivered to take effect as a deed before it be written.

150. And therefore in an action of debt brought against executors, who plead a release of the plaintiff made unto their testator, the release beareth date after the purchase of the writ; now if the executors will say that it was first delivered in the life of the testator, the plea is insufficient; *causa patet*.
 T. 18 E. And if the date of the probate of a will be
 2. 160. more ancient than the date of the making of the same will, the will is void as to bring an action upon it, &c. And it is to be known, that if a man plead a release, or other deed, bearing date at such a place, *viz.*
 H. 22 H. at *Dale* in the county of *Middlesex*, &c. he
 6. 13. shall not be suffered to say, that it was delivered at another place than where it beareth date.

151. And

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151. And therefore, if an action of debt ^{36 H. 6.} be brought by administrators, and they declare, that the administration was committed unto them in *London*, and the letters of administration bear date in another place; and in another county than they have declared, the declaration shall abate: And so know, that he who pleads a deed shall not vary from the place where it bears date; but he against whom a deed is pleaded may say, that it was made by duress of * imprisonment at another place, and in another county than it beareth date. * [68]

152. And therefore, if in *quare ejecit infra terminum*, or *terminum qui præterit*, or in *formedon*, &c. the tenant plead the release of the demandant, bearing date at *Dale*, &c. and the demandant say that he was taken by the tenant at *Dale* in another county, and there was imprisoned by him, until he made the deed unto him, this is a good plea; and the matter shall be tried where the imprisonment is alledged, &c. And so a man may vary from the place which is comprised in the deed; because when a man maketh a deed by imprisonment, he to whom the deed is made may put in the deed what date he will. ^{M. 22 E. 3.} ^{16.} ^{Visne 7.}

153. And it is to be known, that an obligation or other deed may be made by Abbot and Convent out of their Monastery; for all the Monks may be in another place: So that if the deed say, *datum apud London*, without speaking *de domo capitulari*, such a deed is good enough, although that their Monastery were at *Kingston*, &c. But if their deed say *datum* ^{M. 9 E. 4.} ^{40.}

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datum in domo capitulari, this cannot be but where the Chapter is, &c.

154. And it is to be known, that a deed cannot have and take effect at every delivery as a deed; for if the first delivery take any effect, the second delivery is void. As in case an infant, or a man in prison, make a deed, and deliver the * same as his deed, &c. and afterwards the infant when he cometh to his full age, or the man imprisoned when he is at large, deliver again the same deed as his deed, which he delivered before as his deed, this second delivery is void. But if a married woman deliver a bond unto me or other writing as her deed, this delivery is merely void; and therefore if after the death of her husband she being sole, deliver the same deed again unto me as her deed, the second delivery is good and effectual.

* [69]
M. 3 H. 6.
4.
H. 8 H. 6.
8.

155. Notwithstanding that a deed be sufficiently written, viz. without rasure, interlining or new writing upon the old writing, or without any other like fault; and also be sufficiently sealed and delivered as the deed of the party; yet if the words in the deed in themselves are not sufficient in law to bind the party, the deed will avail little or nothing against him.

156. And therefore, if the disseisor enfeoff a stranger by deed, and the words in the deed are such, viz. Know all men, &c. *quod ego*, the disseisor (and name him) *per assensum & consensum* of the disseisee (and name him) *dedi & concessi & hoc presenti*, &c. unto the stranger, &c. and that be done before

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before any entry made by the disseisee, these words (*per assensum et consensum*) of the disseisee shall not bind him, but that he may enter, notwithstanding that it be true, that the * feoffment was made with his assent and * [70] consent; for when he is disseised he hath but a right which shall not depart from him if not by extinguishment; and it ought to be at least by deed, and made unto him, who at the least hath the possession of the freehold in the same land at the time, &c. And in this case the feoffee had not any possession at the time of the feoffment; and the disseisor cannot enter in the name of the disseisee, and revest the possession in the person of the disseisee; for the disseisor himself is in possession, and he cannot enter upon himself, &c. So it cannot be that the disseisor doth make this feoffment as servant unto the disseisee; for it is made in the name of the disseisor, &c.

157. But if the disseisee had entred, and then the disseisor and the disseisee had joined in a feoffment by deed, with words of confirmation, then it shall be said the feoffment of the disseisee, and the confirmation of the disseisor. But if they have joined in such a feoffment by deed, before entry of the disseisee, and the disseisor had made livery of seisin, now it shall be said, the feoffment of the disseisor, and the confirmation of the disseisee. And if a stranger had entred in M. 3 H. 6. the name of the disseisee, and by his commandment had made a feoffment in the name of the disseisee, *et per assensum et consensum* of the disseisee by a deed, containing in it a warrant

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* [71] warrant of attorney to make livery of seisin,
* by such feoffment the disseisee shall be bounden.

H. 40 E. 158. And it hath been holden, that a man
3. 16. shall be bounden by the speaking of another
T. 4 E. 1. man, by averment thereof in putting his seal
16. to it, and delivering of it as his deed. As if
a man be obligee in debt, or covenant by
writing, *et ad maiorem huiusmodi rei securi-*
tatem, inveni A. de B. et C. de P. fideiussores,
quorum unusquisque in toto et in solido se obli-
gavit. And notwithstanding that none speaks
the same but their principal, yet if the other
put their seals to it, and deliver the same
writing as their deed, then they allow of that
which the principal speaketh; and so they
themselves are become principals, and so it
hath been holden; *tamen quære.*

14 H. 6. 159. And it is to be known, that at this
22. day, a man shall be bounden by putting of
his seal unto a deed indented, and delivery of
the same; and yet the words within the deed
are spoken only by another man. And there-
fore, if a man make a lease unto me of my
own land by deed indented for years, without
saying any more, by this deed I shall be con-
cluded; and yet there is no speech of mine
in the deed. And if father and son be, and
E. 43 E. the father is seised of one acre of land in fee,
3. 17. and a stranger lease the same acre unto the
father by deed indented for years, and the
father dieth, now the lessee by this deed shall
conclude the heir of the * lessee to say, that
his father died seised in his demesne as of fee;
and

* [72]

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and yet there is not any speaking in the deed by the father, &c.

160. And it is said by some men, that if in a deed indented made between two, both speak by words within the deed; but the words which one speaketh be in the first person, and the words which the other speaketh are in the third person. In this case they say, that all the words in the deed shall be said to be spoken by him who spake in the first person, which saying is nothing to the purpose. M. 35 H.
6. 34.
M. 9 H. 6.
35.

161. Now is to shew, where the words *contingat*, or *proviso*, or such like words in a deed, shall be void, where not. And to that purpose it is to be known, that when the *habendum* or *contingat*, &c. is not repugnant unto the premisses of the deed, but may well stand, then the *habendum*, or, &c. shall be good and effectual, if not that it be in special cases. But if the *habendum*, &c. cannot stand with the premisses, but is repugnant to their premisses, then the *habendum*, &c. shall be of none effect; but all the deed shall take effect upon the premisses, if not in special cases. M. 14 H.
8.

162. And therefore if a man enfeoff another by deed, and in the premisses of the deed give the land unto the feoffee and his heirs, *habendum et tenendum* unto the feoffee and his heirs for term of years, or for another man's life, this * *habendum* is void; and the deed shall take effect upon the premisses, notwithstanding the livery of seisin be made according to that whole deed. The reason is E. 10 E. 3.
* [73]

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is apparent; for by the premises of the deed the feoffor hath given the land unto the feoffee and his heirs, who had an estate in fee; and by the *habendum* he hath excluded the feoffee to have fee in the same land, and so the *habendum* repugnant unto the premises of the deed, and therefore void.

163. And if two men are enfeoffed by deed, to have and to hold unto one of them, this *habendum* is void; *causa pater*. But if three men are enfeoffed by deed, and in the premises of the deed no estate be expressed, to have and to hold to one of them and his heirs, he hath a fee-simple expectant of the whole land upon the lives of the other two his joint feoffees, and all three of them are jointenants of the whole freehold.

E. 12 E. 3. 164. If lands be given to *John* and *Alice*
77. his wife, and unto the heirs of the body of
H. 5 H. *John* begotten; and if it happen, that *Alice*
4. 3. and *John* die without heirs of their bodies
begotten betwixt them, that then their land
shall remain unto the right heirs of *Henry*,
this *contingat* is good, and may stand with
the premises, and therefore is good, &c.
And if *J. S.* be enfeoffed, to have and to
hold to *J. S.* and *T. K.* and livery of seisin
is made unto *J. S.* according unto the deed,
* [74] * it is void unto *T. K.* But if livery of
seisin had been made unto *T. K.* according
unto the deed, then he takes by the livery
of seisin and not by the deed.

165. And if a man be enfeoffed by deed,
of two acres, to have and to hold three acres,
and livery of seisin be made unto him accord-
ing

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ing into the deed in the two acres, the third acre of which there was no speech in the premisses of the deed, shall not pass by the deed; but if livery and seisin be made in this acre, then it shall pass by the livery of seisin, &c. And it hath been holden, that by the words comprised in the clause of warranty, the estate shall be altered; but the same is not law as I think.

166. And therefore, if lands be given by T. 12 E. these words, *Sciam, &c. quod ego, &c. dedi* 3.

D. et I. uxori ejus, et ego, the feoffor, warr. *prædict. terras, &c. dict. D. et I. uxori ejus, et hæred. de corpore eorum exeunt.* and livery of seisin be made according to the deed, they shall not have any estate but for their lives, &c.

167. But if a man be enfeoffed of one acre of land, and no estate is expressed in the premisses of the deed, to have and to hold unto him and his heirs, the *habendum* is good and effectual; because it is not repugnant, for it includes the premisses and more: For if livery of seisin be made, and no estate expressed to him to whom the livery is made, he hath an estate for his life, &c. And by the * *habendum* he had an estate in fee, which * [75] includes the premisses of the deed and more, &c. So shall it be if an estate for years, or for life, or for the life of another, be expressed in the premisses of the deed, to have and to hold to him and his heirs, &c.

168. And if an estate tail had been expressed in the premisses of the deed, now by 3. 20. H. 45 E. this *habendum* it hath been holden by some men

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8 Co. 154. men, the feoffee shall take nothing, but the
 b. *habendum* is void; and the deed shall take all
 1 Inst. 22. its effect upon the premises which is not law
 a. (as I think), but that the *habendum* shall take
 E. 5 H. 5. effect to such intent, viz. that the estate
 6. tail shall be executed in the donee, by force
 of the premises of the deed; and the fee
 simple shall be in him expectant upon the
 estate tail, by force of the *habendum*, &c. 1
 169. If land be given by deed *Reginaldo*
et K. ux. ejus, et hæred. eorum et aliis hæred.
dict. Reginaldi, et si dict. hæred. de dict. Re-
ginaldo & K. obierint sine hæred. de se procreat,
 this is a good estate tail: And the reason
 wherefore these words, in the case of the deed
 are effectual is, because they are not repug-
 nant unto the premises; for their heirs are
 not excluded to have the land by these words;
 but it is by them declared, what manner of
 heirs shall have this land; and so they may
 stand together, &c.

* [76] 170. And it hath been holden by some
 * men, that, if lands be given by the pre-
 mises of a deed unto two men and their heirs,
 to have and to hold to them, and to their
 heirs of their two bodies begotten, that the
 donees have estate in tail, and also fee-simple
 expectant upon the estate tail, which is not
 law, as I conceive; for they have a joint estate
 for their lives, and are tenants in common of
 the estate tail, and they have not any fee-
 simple; and the reason is apparent, &c.

Lib. Ass. 171. And if lands be given unto a man
 pl. 14. and his heirs, if he hath issue of his body,
 and if he die without heir of his body, that
 then

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then it shall revert unto the donor, this is a good estate tail. And if lands be given by deed, by these words, *Dedi, &c. totam meam, &c. Habend. et tenend. &c. sibi et hæred. suis terram, si hæred. de carne sua habuerit; Et si nullos hæredes de carne sua habuerit, revertatur dicta terra ad me, the donor, et ad hæredes meos*, this is an estate tail. And if land be given by deed, viz. *D. dedit I. et A. ux' ejus et uni hæred. de corpore suo legit. procreat. et uni hæred. ipsius hæredis tantum*; it hath been holden the same as an estate in tail; *tamen quære*.

172. And it hath been holden, if land be given unto a man by deed, and to his heirs of his body issuing; and if his first issue die, without heir of his body issuing, that then the land shall revert unto the donor; and the donee hath issue three sons, and dieth, and his eldest son * dieth without issue, notwithstanding these words, his eldest son shall have this land, &c. And the reason is, because that these words (if his first issue die without heir of his body) are repugnant unto the word going before, *tamen quære*; for some men think contrary; for that these words are but a declaration which issue of the body of the donee shall have the land, &c. * [77]

173. And if land be given by deed unto *J. S. Et si contingat ipsum obire sine hærede de corpore suo, quod tunc revertat*. to the donor and his heirs, without any *habendum* in the deed, and livery of seisin is made according to the deed as ought to be intended, in this case, the donee hath an estate in tail, not.

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notwithstanding that it is not given unto him and his heirs. For the statute of *West. 2. cap. 1. wills, quod voluntas donatoris secundum formam in charta doni sui manifeste expressam de cetera observetur.*

H. 10 E.
5. 59.

174. And if lands be given unto *J. S.* and *T. K.* in the premisses of the deed, and no estate is expressed in the premisses of the deed, to have and to hold unto *J. S.* for life, the remainder unto *T. K.* and his heirs, this *habendum* is good and effectual, because it is not repugnant unto the premisses; but makes a declaration of the premisses, how they shall take the land, &c.

* [78]

175. And if one acre of land be given unto two by deed, to have and to hold one moiety to one and his heirs, and to * have and to hold the other moiety unto the other and the heirs of his body issuing, the *habendum* is good and effectual: But if the premisses of the deed are of two acres, and the *habendum* is but of one acre, and the estate of none of them is enlarged by the *habendum*, it is a void *habendum*; because that it excludes the feoffees of part of that which was given.

176. As put the case: White acre and black acre are given unto *J. S.* and *T. K.* and unto their heirs, to have and to hold white acre unto them and unto their heirs, the *habendum* is void: But if this acre be warranted unto them, this warranty is good; notwithstanding it doth not extend unto all their land which was given, or unto all the persons as were enfeoffed, &c. or if the warranty

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ranty be made by one of the seaffors, it is good enough.

177. And if land be given unto two for the term of their lives in the premisses of the deed, to have and to hold the moiety of this land to them and unto their heirs, the *habendum* is good, because it is not repugnant; for by the *habendum* their estate is enlarged in the moiety, so as they have a fee-simple in this moiety, and a freehold in the other moiety, &c. And if land be given unto husband and wife, to have and to hold, &c. unto the husband for life, and unto the wife and her heirs, the *habendum* is good and effectual, &c.

* 178. Now is to shew, to what person * [79] words uncertain contained in a deed shall E. 22 E. have relation. And for that, know, that if 3. 4. an Abbot make a grant by such words, viz. *A. D. Abbot of such a place, &c. grants quondam annuam pensionem ad T. D. ad regatum I. de Exon. illam pensionem quam idem I. de Exon. habuit pro termino vite sue in festo natalis Domini et Pasch. percipiend. quousque sibi de competenti Beneficio fuerit prorsum, &c.* These words, &c. (*quousque sibi*) shall have relation unto the grantee.

179. And if a deed be made in this form, M. 9 H. viz. *Noverint universi per presentes nos de 6. 35. com. assensu, &c. Dedit, &c. W. H. et hæredibus suis unum dostum quo jacet, &c. Habendum, &c. reddend. nobis et successoribus nostris xii. d. et pro hac concessione prædict. W. H. renunciavit totam communiam cum diversis averiis nostris, &c.* These words in the

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the deed (*renunciavit totam communiam suam*) shall have relation unto the Abbot and Convent in consideration of the premisses in the deed; *tamen quære.*

- M. 2 E. 180. And if a man by his obligation doth
4. 20. acknowledge himself to be in debt unto the obligee in twenty quarters of corn, to be delivered unto the obligee, at such a place, &c. and to perform the same, he, *viz.* the obligor, acknowledgeth himself to be bounden in one hundred shillings, and doth not say to whom he doth acknowledge himself to be bounden, in this case * it shall be taken, that he is bound unto the obligee of the corn in consideration of the premisses of the obligation.
- * [80]
- M. 45 E. 181. If a man seised of land in fee thereof
3. 14. enfeoffe me by deed, *Habendum et tenendum*
T. 20 H. *mibi et hæred. meis*; and moreover by the
6. 8. same deed grant the same land unto me, and
M. 19 H. *hæred. prædict.* this word (*prædict.*) shall
6. 73. have relation unto my heirs: But if a rent be granted unto J. S. and T. K. to perceive unto them and their heirs, and do not shew whose heirs, the grantees shall have estate but for their lives.

FEOFFMENTS.

182. **N**OW is to speak of feoffments. Co. Lit. 6.

And: forasmuch as a feoffment^a cannot take effect without livery and seisin, something shall be said what persons may make livery of seisin, and what persons may take by livery and seisin; and how; and in what manner and form, livery of seisin ought to be made: And when the livery of seisin shall be void, for the presence of man or woman upon the land, who will not agree and assent unto the livery of seisin, &c. And when by livery of seisin in one acre, many acres shall pass; and when feoffees shall have an estate of inheritance, without speaking of their heirs or successors.

183. And it is to be known, that * there * [82] are some persons who may make livery of seisin in their own right; and also as servants unto others: And some persons who cannot make livery of seisin in their own right; but as servants unto others, they may. And some persons may make livery of seisin by themselves in their own right unto some persons, and unto others they cannot; and some persons shall make livery of seisin, and take by the same livery, &c.

184. And it is to be known, that all such persons as may grant by themselves may make
E
livery

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livery of seisin by themselves, *viz.* in their own right; and as servants unto others, in the same manner and form as they may grant, *§c. mutatis mutandis, §c.* And as to such persons, see the Chapter of GRANTS, *mutatis mutandis, §c.*

185. And as to such persons as cannot make livery of seisin in their own right, but as servants unto others, may know, that a Monk, Frier, Canon professed, nor a married woman, cannot make livery of seisin by themselves, *viz.* in their own right; and if they do make any livery of seisin in their own right, it is void; and the reason is, because that such persons professed in Religion, cannot have any land in their own right, unless it be severed from the same house of Religion, *§c.*

M. 9 E.
3. 28.
* [83]

186. And notwithstanding that a married woman may be seised in her own * right with her husband, yet livery and seisin made by her alone, without the agreement of her husband, is void; insomuch that her husband and she may have an assise notwithstanding such livery of seisin, if the husband be seised of the freehold in the right of his wife: But in such case, if the husband were seised in his own right, then notwithstanding such livery of seisin made by the wife, he shall have an assise in his own name, *§c.*

E. 10 E.
4. 46.

187. But if a Monk or other person professed in Religion, or a married woman, make livery of seisin according to the deed of a person able to make a feoffment in his own right, and by letter of attorney made by the same feoffor

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feoffor so to do, then such feoffment is good; ¹ Inst. 52. because that the feoffee in such case is not in ² the land by him that makes the livery of seisin; but is in the land by the feoffor. But if they do not make such livery of seisin, according to their warrant of attorney, to make livery of seisin. Then in some cases, it is a disseisin unto the feoffor, &c.

188. And therefore, if a Monk, or, &c. ^{M. 11 H.} hath a warrant of attorney to make livery of ^{4. 3.} seisin upon condition, and he make livery of ^{40 Aff. pl.} seisin without condition, this is a disseisin unto ^{38.} the feoffor. And if the warrant of attorney be, to make livery of seisin after the death of a stranger, and he make livery of seisin in his life time, this is a disseisin unto the feoffor; and if * livery of seisin should be made * [84] unto two, and he make livery of seisin but ^{12 Aff. pl.} unto one of them, and doth not make livery ^{24.} of seisin according to the deed, this is a dis- ^{40 Aff. pl.} seisin unto the feoffor; and the reason in ^{38.} these cases is, because he hath disobeyed the commandment of his master.

189. But if he, *viz.* the attorney, do the command of his master and more, yet it shall be good for that which hath reference unto his commandment, and void for the rest, if not that it be in special cases. As put the case: The warrant of attorney be to make livery of seisin unto one man, and the attorney make livery of seisin unto two, it is good to him to whom the warrant doth extend, and void unto the other. And so is it if the warrant of attorney be to make livery of seisin of black acre; and the attorney

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make livery of seisin of white acre and black acre, in this case all is not void, for it is good for black acre; and the reason is, because the attorney hath done all the commandment of his master, and more.

1 Inst. 258. 190. As, if I give licence unto a man to
 2. take my white horse, and he take my white horse and my black horse, in this case he is a

trespasser in taking the black horse, but not in taking the white horse; and the reason in this case is, because it is a licence in deed, and he hath done all and more, &c. But if

• [85] lessee for years * be of a house, and the lessor enter into the house to see if waste be committed or not, that is lawfully done; but if

8 Rep. at the same time the lessor carry away any of
 146. b. the goods of the lessee against the will of the

T. 15 H. lessee, in this case, the lessor shall be punished
 4. for his entry; and yet the same was lawful

at the beginning; and the reason is, because that when the law gives a man a liberty unto a certain intent, and he use this liberty unto another intent or misuse it, he shall be a trespasser from the beginning, if not that it be in special cases, &c.

191. And therefore, if a man enter into a tavern to drink, and when he hath drank he carrieth away the cup without the will of the taverner, now he shall be punished for his first entry; for it cannot be intended that his entry was unto any other intent, but to steal the cup, for the law cannot judge his intent against his act done, *ex post facto*: The same law is, if a distress be taken, for doing damages; or for a rent-service, and the

8 Rep.
 146. b.

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the same be misused; *Quere* if a distress be taken for a rent-charge, and be misused. M. 5 H.
7. 11.
And so is the difference between a licence in fait, and a licence in law, &c.

* 192. But if a warrant of attorney be * [86] made to make livery of seisin unto two men, 22 Aff. pl. and one of them die before the livery of 29. seisin made, and the attorney make livery of seisin according to the deed unto the other feoffee who is living, it is good unto him for all the land. And so is it if one of the feoffees be professed frier before the livery of seisin made; *causa patet*, &c. And it hath been holden, that if a warrant of attorney be made to make livery of seisin with condition that it is a disseisin unto the feoffor; *tamen quere*, because that the attorney hath done all the commandment of his master and more. 1 Inst. 258.

193. And it is to understand, that there H. 22 H. are some persons who make livery of seisin 6. 42. in their own right unto some persons, and E. 10 E. unto other persons they cannot; notwithstanding that such persons are of ability in 4. 3. law, to take livery of seisin by force of feof- 21 E. 3. 27. ments of other men of abilities in law to make feoffments. And therefore, if two joint-tenants be, one of them cannot enfeoff his companion, because he cannot make livery of seisin unto him: But if two coparceners be, one of them may enfeoff the other of his part and portion; and if two coparceners be, one of them may release unto the other, and it shall be good and effectual to give an estate in his part to the releasee.

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* [87] * 194. And if a contract of marriage be
E. 38 E. 3. between a man and a woman; yet one of
12. them may enfeoff the other, for yet they are
not one person in law, in so much as, if the
woman die before the marriage solemnized
betwixt them, the man unto whom she was
contracted, shall not have the goods of the
wife as her husband, but the wife thereof
may make a will without the agreement of
him unto whom she was contracted, &c.

195. And it hath been holden, that if a
M. 16 H. man contract himself unto a woman, *et*
3. 117. *postea cognovit eam carnaliter*, and afterwards
he doth enfeoff the same woman of a carve
of land, and puts her in seisin thereof, and
afterwards marrieth her *in facie ecclesie*, that
this feoffment is void; because that it is
made *post fidem datam, & carnalem copulam,*
& sit tanquam inter virum & uxorem: For
that the marriage is subsequent, &c. But
at this day if such a feoffment be made, it
is good enough. But after the marriage ce-
lebrated between a man and a woman, the
man cannot enfeoff his wife, for then they
are as one person in law.

M. 15 E. 4. 196. But in diverse cases a man may be a
1 Inst. 187. means to make a thing pass unto his wife,
b. which shall not immediately pass from him.

And therefore, if a man enfeoff a married
woman, and make a letter of attorney unto
the husband to make livery of seisin ac-
cording to the deed, * and he make livery
of seisin accordingly, it is a good feoffment,
1 Inst. 52. for the husband is but a means to convey
a. the

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the freehold to the wife; for by this act Co. Copy: done no freehold doth pass from the person, §. 35.
Et c.

197. And it hath been said, that if two 1 Inst. 113.
 jointenants be in fee, and one of them a-
 lease that which belongeth unto him unto
 a stranger for years; the remainder for life
 in tail, or in fee, to his companion; and li-
 very of seisin is made unto the lessee for years
 accordingly; that this remainder is good.
 But it seemeth the remainder is not good, for
 it had not been good if livery of seisin had not
 been made unto the lessee for years: So it
 appeareth, that the remainder shall pass by the
 livery of seisin; and one jointenant cannot
 make livery and seisin unto his companion,
Et c. Ideo quare; And if a man disseise me of
 a carve of land, he cannot enfeof me by mat-
 ter in deed; because my entry is lawful up-
 on him, *Et c.*

198. And it is to be known, that some
 make livery of seisin, and take by the same
 livery of seisin; but then they do not make
 livery of seisin in their own right, or other-
 wise they do not take by the livery of seisin
 in their own right, if not that it be in spe-
 cial cases, *Et c.* and therefore if land be leased
 for life unto *J. S.* the remainder unto *T. K.*
 * in fee; and a letter of attorney is made * [89]
 unto *T. K.* to make livery of seisin, and he 1 Inst. 52.
 make livery of seisin unto the lessee accord- a-
 ingly; in this case he takes by the same li-
 very of seisin which he himself made; but
 not of his own grant, for he made the same
 as servant unto his grantor.

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199. And it is said, that if a man enfeof two by deed, and makes a letter of attorney unto one of them to make livery of seisin, and he make livery of seisin according unto the deed unto his companion; he himself who makes the livery of seisin shall take by the same livery of seisin, because he shall be in by the feoffor, and not by himself, &c. And if a man seised of land in the right of his wife, lease the same land for life reserving rent, and makes a letter of attorney unto the wife to make livery of seisin, and she make livery of seisin accordingly, and the husband die, and the wife accept the rent, yet she shall have *curia in vita*; for this acceptance, cannot make the lease good, in so much as she is a stranger unto the lessee, for the lessee took nothing by the wife, notwithstanding that she made livery of seisin, for she made that but as servant unto her husband, &c.

200. But if a man lease lands for life, and the lessee thereof enfeof a stranger, and makes a letter of attorney unto his lessor to make livery of seisin accordingly, and he makes livery of seisin; in this case it hath been said by some persons, that the lessor may enter upon the feoffee for a forfeiture, notwithstanding the livery of seisin made by him; for they say that the feoffee took nothing by him, for the lessor had nothing to do upon the land, if not to see whether waste were done; or to distrain for his rent and services, if they were behind. And if the lessor be vouched, and he hath not other possession

• [90]

1 Inst. 52.
a.

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possession in the same land, after the title of the writ, in which writ he is vouched, but by making of livery of seisin by force of the letter of attorney, the demandant may well counterplead the vouchee, &c.

201. And if my disseisor be disseised, and brings assise of novel disseisin, I may well give in evidence this disseisin; and yet I shall have assise against my disseisor, &c. And against that it may be said, that the lessor shall not enter for the forfeiture, because he is party unto the wrong; viz. the discontinuance of the reversion; for nothing of the freehold passeth unto the feoffee, if not by the livery of seisin; and the lessor himself made the livery of seisin, which is an agreement of him, that the feoffee shall take by force of the feoffment; and he who is party to the doing of wrong shall not take advantage thereof.

202. As if lessor and lessee for years, &c. M. 18 H. join in the cutting down of twenty * oaks 8. 5. growing upon the lands leased, the lessor * [91] shall not punish the same in an action of waste, &c. And the heir who is party unto the death of his father shall not have an appeal thereof; and if the issue in tail discontinue the discontinuance of his father, and thereof enfeoff his father, and the father die seised, 1 Inst. 357. and the issue in tail enter, he shall not be remitted, &c.

203. And if lessee for life of an acre of land, lease the same acre unto his lessor for years, the remainder unto a stranger in fee, and make livery of seisin unto the lessor, it

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is no forfeiture. And if tenant for term of life, enfeoff the wife of his lessor of the same land, and makes a letter of attorney unto his lessor to make livery of seisin, which is made accordingly, it is no forfeiture, &c. And it is to be known, that if a man make a deed of feoffment of his own land unto himself, and unto a stranger, and make livery of seisin unto the stranger according to the deed, all shall pass unto the stranger, and nothing unto himself; for that he cannot give unto himself as this case is, &c.

204. If a feoffment be made unto a monk professed, and unto a stranger by deed; and livery of seisin is made unto the stranger according to the deed, all passeth unto the stranger: But in the same case, if livery and seisin be made unto the monk according to the deed, and * not unto the stranger, nothing shall pass thereby. And if a man make a deed of feoffment unto two, and one of them die before livery of seisin made according to the deed, and afterwards livery of seisin is made unto him who agreed to the deed, all passes in law.

Finch 72.

205. And unto divers respects, a man shall take by livery of seisin which he made in his own right, but then he shall not take in his own right; if not that it be in special cases. And therefore, if dean and chapter are, and one of the chapter is sole seised in fee in his own right of land, and thereof by deed enfeoff the dean and chapter, and make livery of seisin according to the deed, in this case the feoffor giveth, and taketh by the same gift in divers respects. And so shall it

H. 22 H.
6. 43.

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it be of mayor and commonalty, if one of the commonalty be seised of land in his own right, and thereof enfeoffe the mayor and commonalty. And it is to be known, that such persons as are in possession of lands for years, or for life, or, &c. cannot take livery of seisin of the same land, &c.

206. Now is to shew, how and in what manner livery and seisin ought to be made. And it is to be known, that of a rent reco- E. 40. E.
 vered, if the sheriff put the party who re- 3. 22.
 covered in seisin, by the herbs growing up-
 on the land out of which the rent is issuing;
 or by a bough or a twig of a tree growing
 upon the land out of which the rent is issu-
 ing; * or by distress of cattle levant and * [93]
 couchant upon the same land; or by a clod 3 E. 3.
 of the same land; this is a sufficient seisin, Ass. 444.
 notwithstanding that the day of payment of
 the rent be not yet come: But then the par-
 ty cannot drive such beasts with him out of
 the same place, &c.

207. And if a man come into a rent by purchase, &c. then it behoveth that he be seised of such things which is of the nature of the rent, and not of other things, if not that it be in special cases.

208. And if a man recover land, he may enter into the land recovered if his demand be certain, as of one acre, three acres, or a carve of land, &c. or he may sue execution T. 49 E. 3.
 by *habere facias seisinam*, and then the sheriff 23.
 may put him in seisin by delivery unto him a bough, or a twig of a tree, or herbs grow-
 ing upon the land, or by delivery unto him

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of a clod of the same land in the name of seisin, &c. and if the recovery be of a house, then the sheriff may put him in seisin by delivery unto him the ring of the door; or otherwise he may open the house door, and say to him, that he enter into the house and take seisin thereof by force of the recovery.

39 Aff. pl.
12.

209. And it is to be known, that the manner, for to deliver seisin of land by force of a feoffment, is to remove all persons off the land; and the one being upon the land in the presence of all the persons that are there to shew the cause of their * coming, and, then if the feoffment be by deed, to read the deed in *English*, and the deed being read, the feoffor to enter upon the land, and take a clod of the same land, and deliver the same with the deed, as the deed unto the feoffee in the name of seisin of the same land; to have, hold, and enjoy according to the purport of the same deed, &c.

* [94]

210. And so, and in the same manner shall it be done, if livery of seisin be to be made by a stranger by force of a warrant of attorney, *mutatis mutandis*, &c. And if a feoffment be made by word, it appeareth out of what is before, how and in what manner livery of seisin shall be made; and also if a feoffment be made of a house, it appeareth out of the premisses how and in what manner livery of seisin shall be made; and if a feoffment be made of a house or land by deed, and the feoffor in coming to the house, or land with the feoffee and others, &c. read the deed of feoffment, and afterwards

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afterwards goeth unto the house or land, and delivereth seisin accordingly, it is good; notwithstanding that the feoffor remain upon the land or in the house all the time, and take the profit, at the sufferance of the feoffee.

211. And if a man lying upon his death-bed in his house, make a charter of feoffment of the same house, and deliver the same unto the feoffee, saying, have and hold this house according to the purport and effect of this charter, and the * feoffee by force thereof take seisin, notwithstanding that the feoffor continue in the same house, and there die, it is a good livery of seisin and a good feoffment. 17 Aff. pl. 61. 11 Aff. pl. 6. * [95]

212. And if a man lying sick within a manor, sell the manor unto a stranger, and saith unto him, that he wills that he shall take seisin presently, and commandeth all his servants to be attendants upon him as their lord and master, and thereupon the vendee taketh seisin, and perhaps giveth unto the servants twenty shillings to drink, and the tenants of the master attach unto him, and the vendee goeth from the manor about his business, and the feoffor dieth upon the same manor, yet it is a good livery of seisin according to the words of the estate, &c. And it is to be known, that livery of seisin may be made of land, or of a house within the view. 43 Aff. pl. 20.

213. And therefore, if I deliver a deed of feoffment unto you, and shew unto you the lands or tenements, and say unto you, that I will that you enter into the same lands or tenements, to have and hold according to the purport

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purport and effect of the deed, and deliver unto you the deed as my deed, and you enter into the same lands, &c. this is a good feoffment, &c.

E. 38 E. 1. 214. And if a man make a deed of feoffment unto *Alice* at *Stile*, and afterwards the

* [96] feoffor and the said *Alice* * come unto the

E. 38 E. Church door to be married; and the feoffor

3. 5. delivereth the same deed unto *Alice*, and

sheweth unto her the tenements which are comprised in the deed, and saith unto her, that he will that she shall have the same tenements which she seeth, and afterwards they are married together, and the husband ever after claimeth a thing therein, but in the right of the said *Alice*, this is a good feoffment, notwithstanding that *Alice* doth not enter; for the entry of the husband is sufficient for her.

215. And it is said, that if a man make a deed of feoffment in my name of land whereof I am seised, and cometh unto me, and prayeth me that I would deliver unto him seisin of the same land contained in the deed, according unto the purport and effect of the deed, and I take the deed and read it, and then I say unto him, Sir, I deliver unto you this deed as my deed in the name of seisin of all the lands, tenements and other things comprised in the deed, to have and to hold according to the purport and effect of the deed; and by the force thereof the feoffee presently enter, this is a good feoffment, &c.

E. 43 E. 3.
51.

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216. And it hath been said, that if there be father and son, and the father is seised of land whereof he enfeoffeth his son, and the son after livery of seisin made unto him, suffer his father to occupy the same land, who is contented to occupy the same at the will of * the son, and afterwards the son * [97] cometh unto the parish Church of the town 39 Aff. pl. where the land lies, and there in the hearing 12. of the parishioners saith unto his father, Father you have given unto me lands, and declareth the certainty thereof, &c. and as fully as you have given them unto me, I do give them back unto you, and the father by force of these words doth presently enter into the lands, that this is a good feoffment; which is not law at this day, as I think, &c.

217. But a man may assign dower unto M. 40 E. his wife, at the Church door in one county, 3. 43. of lands in another county, without deed; the reason is, because that the assignment of dower cannot be made before the contract be finished by them at the Church door, and then they are but one person in law, &c.

218. And it is to be known, that sometimes livery of seisin shall be void by the being of another person upon the land and tenements whereof the livery of seisin is made, who is no party to the livery of seisin. And as unto that, know, that when two men come upon lands and tenements together to claim the said lands and tenements, and one of them claimeth by one title, and the other claimeth by another title, the law doth adjudge the possession in him who hath rightful title

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* [98] title unto the possession ; for if a disseisor be of one acre of land, who dieth seised of the same land in fee, and the heir of * the disseisor, and the disseisee come upon the same land together to claim the same land, the law will adjudge the possession of the land in the heir of the disseisor, and not in the disseisee ; yet the disseisee *habet majus jus ad rem, viz. in jure*, to have the land, than the heir of the disseisor hath : But the heir of the disseisor hath *majus jus in re, viz. in possessione*, to have the land, than the disseisee hath. And therefore, &c.

219. And if a man enter into my lands by wrongful title, and I being there, he doth enfeof a stranger thereof, and doth deliver unto him seisin, it is void ; for he cannot give seisin before he himself hath seisin, and he had not seisin at the time of the livery of seisin ; for the law will adjudge the possession in me, who have right unto the possession ; because that I am present at the time of the delivery of seisin.

220. And if two jointenants are in fee, and one of them doth enfeof a stranger of the whole against the will of his companion being upon the land, by this feoffment but the moiety passeth ; *causa patet*. And if the lessor for years enter upon the lessee, and against the will of the lessee, the lessee being upon the land, the lessor doth enfeof thereof a stranger by deed, this feoffment availeth nothing as a feoffment ; for a feoffment cannot take effect without livery of seisin, and the lessor cannot make livery of seisin against the

2 Aff. pl.
1.
H. 2 E. 3.
4.
5 Aff. pl.
8.

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the will of the lessor, the lessee * being upon [99]
the land, because the law doth adjudge him
in possession, &c. and without a possession a
man cannot make livery of seisin, &c. 1 Inst. 48.
2 Rep. 31.
32.
2 Aff. pl. 3.

221. And that is the cause, that if a lease
for years be of land, and the lessor grant the
reversion unto a stranger, and the lessee at-
torn, that the freehold shall pass without li-
very of seisin; because that the lessor cannot
make livery of seisin without wrong done
unto the lessee, &c.

222. But if lessee for years enfeoff a stran-
ger, the lessor being upon the land, yet the
land shall pass by the feoffment; but perhaps
if he continue upon the land claiming the
same after the feoffment, the same doth
countervail an entry for a forfeiture. And
the reason wherefore it passeth by such feoff-
ment is, because that the lessor had nothing
to do to meddle with the possession of the
land during the term; but he may come
and see whether waste be done, or for to
distrain for his rent if it be behind, &c.

223. And if husband and wife purchase
land jointly in fee, and the possession be ex-
ercised in them accordingly, and afterwards
the husband doth enfeoff a stranger in fee, H. 21 E. 3.
6.
and the wife saith that she will not agree
thereunto, nor go off the land, but con-
tinueth there at the time of the livery of
seisin; notwithstanding the same, all the
land doth pass by the feoffment.

* 224. But if Mayor and Commonalty * [100]
be jointly seised of any land in fee, and the
Mayor against the will of the Commonalty
doth T. 12 E. 3.
3, 4.

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doth enfeoff a stranger of the same land, the Commonalty being upon the land when livery of seisin is made, nothing passeth by this feoffment, &c.

225. And if the Dean make a feoffment without the assent of the Chapter, in his own name, of land in which he is jointly seised with the Chapter, the Chapter being upon the land at the time of the livery of seisin, nothing shall pass by this livery of seisin. But if an Abbot make a feoffment, without the assent of the Convent, in his own name, of land parcel of the Monastery, the Convent being upon the land at the time of the livery of seisin, yet the land shall pass by this feoffment, &c.

226. Now is to shew, when by livery of seisin of one acre of land, or of a parcel of an acre of land, or of one tenement, in the name of many acres or tenements, all shall pass. And as to that, it is to be known, B. 9 H. 7. 24. that, if a feoffment be made generally of all the land which the feoffor hath within the County of *Middlesex*, and he hath lands in twenty several places within the same County, and makes livery of seisin in one acre, or in one house, in the name of all the lands and tenements which he hath in the same County, By this livery of seisin all pass, * [101] &c. inasmuch as if * such a feoffment be pleaded by deed, of an hundred acres; and the feoffor saith, that as unto twenty acres, nothing passeth by the deed, it is no good plea; *causa patet*, &c.

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227. But by livery of seisin in one county, E. 38 E. 3.
the lands and tenements in another county 11.
will not pass; yet if the scite of the Manor
of *Dale* be in the county of *Essex*, and par-
cel of the same manor doth extend into the
county of *Middlesex*, and a feoffment be
made of the manor of *Dale*, and livery of
seisin is made of the scite of the manor which
lieth in the county of *Essex*, by this livery of
seisin, the parcel of the manor which lieth
in *Middlesex* shall pass, because it is parcel of
the thing, viz. the manor of which the feoff-
ment was made, the which manor is but as
one thing to such purpose, &c.

228. But if a feoffment be made of the
manor of *Dale* in *Dale*, which manor ex-
tends into *Dale* and *Sale* and livery of seisin T. 9 E. 4.
is made accordingly in *Dale*, by this feoffment 17.
nothing passeth but that which is in *Dale*;
because that the feoffment is not of more
but of that which is in *Dale*, and the livery
of seisin is made in *Dale*, and not elsewhere,
&c.

229. And it is to be known, that if a T. 9 H.
man be disseised of two acres in several coun-
ties, and the disseisee enter into one acre in 7. 25.
the name of both acres, yet this * entry shall * 1 Inst. 252.
not extend unto the acre lying in another [102]
county, in which acre the entry was not
made.

230. And if in an assise the plaintiff make
his plaint of the manor of *Dale*, and the
tenant plead a feoffment of parcel of the said T. 1 H. 7.
manor by deed, and sheweth a deed of another 29.
manor, viz. of the manor of *Sale*, it is not 6 Rep. 65.
to b.

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to the purpose to make the same pass by the same deed; for the manor of *Dale* cannot be the manor of *Sale*, *nec è converso*. But if he had pleaded a feoffment of the moiety of the manor of *Dale*, by the name of the manor of *Sale*, it should be otherwise; because that the manor of *Dale* may be known by the name of the manor of *Sale*, &c.

231. And it is to be known, that if a man be seised of land, and also of a rent-charge issuing out of land which lieth in the county in which the land whereof he is seised is, or in another county; and giveth the land and rent by a deed, bearing date in the county where the land is whereof he is seised, and livery of seisin is made of the land, and the deed delivered as his deed, yet the rent shall not pass before attornment of the tenant, out of which it is issuing: But if the tenant attorn in the life of the grantor and grantee, then the rent shall pass, notwithstanding that the tenant who doth attorn be another man than he that was tertenant at the time of the grant, and notwithstanding that the deed beareth date in another county, than the land is out of which the rent is issuing.

1 Inst. 15. 232. And it is said, that if a man be dis-
seised of two acres of land in one county, and he enter into one of the acres claiming the said acre only, and maketh a deed of feoffment of both acres unto a stranger, and maketh livery of seisin according to the deed in the acre in which he entred, that both acres shall pass unto the feoffee; because that
this

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this claim is nothing to the purpose, because he had right of entry before, &c. and both acres are in one county, so as his entry into one acre shall be entry into both acres, notwithstanding the claim, &c. Against which E. 9 H. 7. it may be said, that the acre into which the feoffor did not enter, shall not pass by the feoffment; for when a man is out of possession of a thing severable, he is at liberty to continue his possession in it, in which part he will; and shall not be compelled for to re-continue his possession unto all in despite of him.

233. And therefore, if a man be disseised of two acres being in one county, and the disseisor bring assise of one of them, as he may, and recovereth the same acre, and enter into it by force of his recovery, the entry of this acre shall not be said an entry into the other acre; notwithstanding that his entry was rightful into the same acre; and notwithstanding * that both acres are in the same county, if not that he enter in the same acre, in the name of both acres, &c. Then in the principal case, the disseisee was out of possession of both acres; and he may suffer the disseisor to continue possession in them, if he will. And therefore, inasmuch as the acres are severable, and the disseisee hath not entered but into one of them, claiming the same acre only, this entry cannot give him possession in both acres; and notwithstanding that after his entry he hath made a deed of feoffment of both acres, and hath delivered seisin according to the deed in the acre

25. Inst. 252.

b.

[104]

Inst. 252.

in

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in which he entred, claiming that solely; yet that cannot be said an entry into the other acre; because the circumstance of this feoffment doth not give unto the feoffor possession of the acre in which the livery of seisin was made; for the possession of that was in the feoffor, by his entry made before; and so, &c.

234. And if lord and villain be, and the villain purchase two acres of lands in fee
 1 Inst. 252. lying in one county, and possession of them
 b. is executed to him accordingly, and the lord of the villain enter into one acre, not claiming the other acre, and afterwards make a deed of feoffment of both acres unto a stranger, and make livery of seisin in the acre in which he hath entred according to the deed, yet the acre into which he did not enter shall not pass by the feoffment, &c.

* [105] * 235. And yet a man may enter as servant to the lord, and by his commandment, and it shall be good; but notwithstanding that the feoffee do so, yet he cannot take that by the feoffment; for a man cannot make livery of seisin before he himself hath possession, and at the time, viz. when he made livery of seisin he had not possession but only of the acre in which he entred, &c. The same law is, where a man hath title to enter into two acres for a condition broken, &c. *mutatis mutandis*. And so shall it be where a man hath title of entry into two acres of lands holden of him, because they are aliened in mortmain, &c.

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236. Now is to shew, when the feoffees shall have an estate of inheritance, without speech of their heirs or successors. And as *M. 31 E. to that know*, that it is a common rule in *3. 39. law*, that if lands be given in frankmarriage *Co. Lit.* unto a man with the kinswoman of the do- *§. 36.* nor of the whole blood, by these words (frankmarriage) they have an estate in special tail if they intermarry. And if in such case the husband die, and the same donor giveth more lands in frankmarriage unto a second husband of the same woman, this is a good frankmarriage.

237. And a gift in frankmarriage made after the marriage, is good; and yet some have said the contrary; and their reason is, *H. 4 E. 3.* because that the gift in frankmarriage ought *8.* to be made for * advancement of the kinf- * *[106]* woman of the donor by marriage; and therefore such a gift made after the marriage cannot be intended to that purpose. Against which it may be said, that such a deed made to such persons after the marriage between them may be the cause of the marriage, as well as if such a gift had been made unto them before the marriage.

238. And if after such gift in frankmarriage, and after the marriage solemnised *12 Aff. pl.* between the donees, the donees are divorced *22.* at the suit of the husband, in this case, the woman shall hold the whole land, and the husband shall have none of it. But if such a divorce be in other gifts; in special tail by expresse words, yet they shall hold the land so given jointly, during their lives, &c.

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M. 22 E. 239. And if lands or tenements be devised by will, unto a man and his assigns, 3. 16. *in perpetuum*; by these words he shall have a fee-simple. See more of that in the Chapter of DEVICES, &c.
1 Inst. 9. b.

240. And it is to know, that if lands be given unto Mayor and Commonalty for their lives, by intendment they have an estate not determinable. So it is if a feoffment be made of lands unto a Dean and Chapter without speech of their successors.
T. 22 E. 4. 38.

* [107] * 241. And if my feoffee in fee of one acre of land, do reinfeoff me of the same acre by deed, reciting in the same deed, that I have enfeoffed him of an acre of land, to have and to hold to him and his heirs, and saith farther in the deed, that as fully as I have given the lands unto him, he doth give me them back again, and delivereth to me the deed as his deed, and seisin of the land according to the deed, in this case it seemeth, that I have an estate of inheritance in this land, notwithstanding that it is not given unto me and my heirs; because that my estate doth rely upon an estate of inheritance, recited within the same deed; *tamen quære*.
39 Aff. pl. 12.
1 Inst. 9. b.

242. And if I be enfeoffed by deed of an acre of land, to have and to hold the same land to me and my heirs, and by the same deed the feoffor binds him and his heirs to warrant the same land, *in forma prædicta*, by these words I and my heirs shall vouch by this warranty; and yet I nor my heirs are not named in the clause of the
H. 14 H. 4. 13.

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the warranty, &c. But by these words (*forma prædicta*) the warranty relates unto the words precedent in the deed. And the nature of a warranty, is properly to run with the estate, &c. And these words (*forma prædicta*) help this matter, &c.

* 243. But if land be given unto me by * [108]
 deed, to have and to hold to me in fee, with- T. 20 H.
 out speaking of my heirs, and livery of seisin 6. 36.
 be made unto me according to the purport of Lit. §. 1.
 the deed; by this feoffment, I have an estate-
 but for the term of my life, &c.

C H A P. IV. *

* cc]

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244. **N**OW are we to speak of exchange: 1 Inst. 50,
 ges. And it is to be known, 5th that
 that exchanges are made of such
 things, and of such estates, as may pass by
 livery of seisin: And if the things exchan-
 ged are in the same county, the exchange is
 good without deed, if not that it be in spe-
 cial cases. As put the case: Exchange be
 made between J. S. and T. K. of the land
 which one hath in the county of *Middlesex*
 for land which the other hath in the same
 county, &c. But if the lands of J. S. of 9 E. 4. 39.
 which the exchange is made, are in one 45 E. 3.
 county, and the lands of T. K. of which the 20.
 F exchange

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- exchange is made, are in another county, then the exchange ought to be by deed indented, if the estate which the parties take
- [110] by the * exchange be of an estate of freehold or inheritance; But if the estate in the exchange be for years, then the exchange is good and effectual without deed, notwithstanding that the land of the one, which is taken in exchange, be in one county, and the land of the other, which is taken in exchange, be in another county.
 - 1 Inst. 51. 245. But if exchange be made of any thing which lieth in grant, and cannot pass by livery of seisin, then the exchange ought to be by deed, of what estate soever the exchange is taken, notwithstanding that every thing of which the exchange is taken be in the same county.
 - 3 E. 4. 10. 246. As put the case: Exchange be taken of rent for land, and the land out of which the rent is issuing, and the land whereof the exchange is taken, are in one county, then he who shall have the rent in exchange for the land, ought to have a deed of the same, proving the exchange. But it is said, that it behoveth not him who hath the land in exchange for the rent to have a deed proving the exchange; *tamen quere*. For in exchange there ought to be two grants, and in every grant mention ought to be made of every thing taken in exchange; and so, &c. And therefore it is well done, that in such case the exchange be by deed indented.

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* 247. But if an exchange be taken of the reversion of one acre of land for three shillings rent issuing of the other acre of land, and both acres are in one county, it behoveth that such exchange be by deed indented. [111]

248. And so it is if exchange be taken of one acre of land, and of rent issuing out of another acre of land, for common for three beasts, in another acre of land, and also for another acre of land, and all that land is in one county, such exchange ought to be by deed indented, &c. because that one land only is not taken for other land only, or one acre only is not taken in exchange for common only, &c. But the land and the rent are taken in exchange for the common and the land, and the rent is not parcel of the land, nor appendant to it; nor the common parcel of the land taken in exchange, nor appendant.

249. But if J. S. be seised of a manor unto which he hath common appendant, or appertenant; T. K. is seised of another manor unto which he hath a villain regardant, and both manors are in one county, and an exchange is betwixt them of the manors, the common shall pass unto the one with the manor, and the villain unto the other with the manor without deed. But they shall not distrain for the services of the tenants of the manors, without their attornment.

* 250. But if J. S. have an office unto which land is appertaining, and T. K. have a rent [112]
M. 9 E. 4.

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[111] * 250. Arent, issuing of the land of a stranger, and all the land is in one county, and the office is to be used and exercised in the same county, and exchange thereof is taken betwixt them, it behoveth that such exchange be by deed indented; *causa patet*.

251. And it is to be known, that notwithstanding that exchange be taken between two men or women sole, of two acres of land by deed, and in the habendum of the same deed it is recited that every one shall have the said acre put in exchange with divers other acres, to have *in excambium prædicti*, which were not recited in the premisses of the deed. These words shall not alter or make void the exchange, recited and rehearsed in the premisses of the deed. See divers other cases concerning this matter in the chapter of DEEDS; *mutatis mutandis*.

252. And it is to be known, that every exchange ought to be made by the word (*excambium*) or by another word of the same effect, as by the word *permutatio*, &c. And therefore, first, something shall be said thereof. Then what things may be taken in exchange; and then what estates the parties to the exchange ought to have; and lastly, how the estates of the parties unto the exchanges ought to be executed, &c.

* 253. And it is to know, that it hath been said, that in every exchange the word (*excambium*) ought to be, or, &c. as well as in every gift in frank marriage, these words (*frank marriage*) ought to be; and as well as in every gift in frankalmoin, the word (*frankal-*

* [113]
T. 9 E. 4.
21.

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(frankalmoign) ought to be. And therefore, if I give unto J. S. one acre of land by deed indented, without any word of exchange, and for the same acre he giveth unto me another acre of land, in such manner and form, as I have made the gift unto him, and either deliver his deed unto the other as his deed, if livery of seisin be not made the freehold shall not pass, notwithstanding that either hath given his acre unto the other by the indenture; to have and to hold unto him and his heirs. But if either of them enter into the other's acre by force of the deed delivered unto them, they are tenants at will.

254. And if exchange be made by word, M. 45 E. betwixt two men in fee of two acres of 20. land which are in one county, and before T. 38 E. their entry by force of the exchange, indentures are made between them of the same acres in fee, but no word of exchange is expressed in the indentures, and no livery of seisin is made of the land; but either deliver to other the indentures as his deed, and either enter into the other's land contained in the indenture; now either of them holdeth the land at the will of the other, and shall not * take * [114] the land by force of the exchange, for the indenture doth conclude them so to claim the land, &c. But if livery of seisin had been made unto either of them according to the purport of the indentures, then the indentures shall take effect as feoffments, &c.

255. And it is said, if exchange be made in fee of lands in one county, betwixt two

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man by word, and before their entry, by force of the exchange either of them deliver seisin of the land unto the other, it takes effect according to the livery of seisin, and not as an exchange; *tamen quere*. For where either enters into the other's land to take livery of seisin, they are presently seised by force of the exchange, for the entry of either of them was lawful in the other's land, which was exchanged by force of the exchange; so that before livery of seisin to them made, they were seised in fee by force of the exchange; and a man cannot take livery of seisin of land whereof he himself is seised, &c. But if there were only a speech betwixt them of exchange, but the exchange was not made, then it shall be otherwise, &c.

256. And if speech be betwixt two to make exchange of certain land, and either of them levy a fine unto other of the same land, of which the speech was without any word of exchange in the fine, it doth not take effect as an exchange, because there wanteth the word of exchange. *But it is said it is not used to have words of exchange in a fine, &c.

257. And it is to know, that if any man will exchange land or other things by fine, it behoveth them to have two writs of covenant; *viz.* one writ of one land, and another writ of the other land, &c. And it is to know, that if two Parsons of a Church exchange their benefices, by the word *permutatio*, and either of them resign his benefice into

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into the hands of the Bishop, to the same purpose, and the patrons present them accordingly, and the presentments make mention *per viam permutationis*; this is a good M. 45 E: exchange, if either of them be inducted, 3. 10. living the other, &c.

258. Now is to shew, of what things exchanges may be. And as to that, it is to know, that exchange may be of chattels personals for chattels personals; and so it may be of chattels real for chattels real, and T. 9 E. 4. of freehold for freehold, and of inheritance 21. for inheritance, &c. And therefore, if exchange be made between J. S. and T. K. so that T. K. giveth to J. S. his gown in exchange for the horse of J. S. and J. S. giveth his horse in exchange unto T. K. for his gown, &c. it is a good exchange; and so shall it be of other chattels personals; *mutatis mutandis*. And in the same manner shall it be of chattels real, and freehold, and inheritance; *mutatis mutandis*, &c.

259. And if lord and tenant be by * fealty • [116] only, or by homage and fealty, and exchange be made between the lord and a stranger, by deed indented, so that the lord grants his seignory in exchange unto the stranger for one acre of land of the stranger's, &c. and the stranger giveth the same acre unto the lord in exchange for his seignory, and the tenant attorn, and the lord enter into the acre so exchanged, &c. it is a good exchange, notwithstanding that the homage and the fealty be not valuable; so as they shall not be assets upon a lineal warranty de-

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defended upon the issue in tail, &c. For a man may buy such a feignory for money. And by the same reason, a man may give an acre of land in exchange for such feignory, &c. and a feignory by divine service may be exchanged for land, tenement, rent, or service, &c.

260. But a feignory in frankalmoign cannot be exchanged with any persons, but with the tenant in frankalmoign, because that the exchange of a feignory in frankalmoign with a stranger proveth the feignory to be in *offe*; and no person shall have a feignory in frankalmoign, if not the feoffor or his heirs, &c.

261. But *quære*, if lord and tenant be by fealty and twelve pence, and the lord exchange his feignory with the tenant for the tenancy, and *conversely*, by deed indented, if this exchange be good or not: for some say, it is not good, because that, immediately * [117] * upon delivery of the deed, &c. the feignory is extinguished in the tenancy, so as the lord shall have the tenancy, and the tenant shall have nothing for the tenancy; and so, &c. This argument may be answered in this manner; that is to say, to say, that the lord granted his feignory unto the tenant by deed upon condition; and in the same case, if the condition be broken, he shall have his feignory back again. And tenant for life may grant his estate by deed indented upon condition unto his lessor, &c. In the same manner is it of a feignory granted in exchange: For every exchange comprehends

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prehends in it a condition, &c. And so shall it be of an exchange by deed indented of land, and rent issuing out of the same land, &c. And diverse other arguments may be made in this matter; *Ideo quare, &c.*

262. But if a manor or land be given un- T. 9 E. 4.
to me, and I in exchange for the same, nor 21.
nor or land grant unto my donor a rent,
&c. issuing out of the same manor or land,
&c. It is not available to take any effect
as an exchange, &c.

263. But if I grant a rent charge issuing
out of my land unto J. S. in exchange for 30 E. 1.
one acre of his own land, &c. it is a good 1511
exchange; and I may exchange rent which
I have issuing out of the land of J. S. with
T. K. for his own land, tenement, * rent * [118]
or common, &c. And it is good with at- M. 3 E. 4.
tornment, &c. And yet if any of us the 10.
exchangers die before attornment, it is not
good.

264. And if three acres of land, with an
advowson unto them appendant are given in
exchange by T. K. unto J. S. for a chamber
assigned by the said J. S. at the election of
the same T. K. and J. S. assign unto T. K.
two chambers, viz. an upper and a lower, M. 9 E. 4.
and T. K. choose to have the upper chamber, 38.
and enter therein, and J. S. enter into the
land, &c. it is a good exchange, and yet it
was not certain at the beginning, &c.

265. So shall it be, if I give my manor
of Sale in exchange unto T. K. for his ma-
nor of Dale, or for his manor of Dawne,
&c. And if exchange be made betwixt me

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and *T. K.* viz. that after the feast of *Christmas*, *T. K.* shall have my manor of *Dale* in exchange for his manor of *Sale*, &c. it is a good exchange; and either of them may enter into the other's manor, after the feast of *Christmas*, &c. But if I give unto *T. K.* my manor of *Dale* in exchange for the manor of *Sale*, which he shall have after the death of his father by descent as heir unto his father, and his father be living at the time of the exchange, it is a void exchange.

266. But if a man release his estovers, which he hath yearly to take in a wood, &c. and deliver the release in exchange for land * [119] given unto him in * exchange for the release, it is a good exchange; and yet the release took effect by way of extinguishment of the estovers. But it is as good advantage and profit to the tenant to be discharged of them, as if so many estovers had been granted unto him.

267. And so shall it be if I have a rent issuing out of the land of *J. S.* and I grant or release the same rent unto *J. S.* in exchange for other land, tenement, rent, or common, &c. or to have a way over his lands, &c. yet it is said by some, that in every exchange there ought to be a transmutation of the possession of the one exchanger into the other exchanger, otherwise the exchange is not good. But the same is not true as appeareth by the cases aforesaid.

268. And it hath been held; that if I be seised of land to which *J. S.* hath right of action; and I give unto him tenements in exchange

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change for a release of his right, that it is a good exchange; because I may purchase such release for my money: And by the same reason I may give lands or tenements in exchange for the same release; and also I have equal right by the release unto the estate which I give, and it shall be a good advantage unto me to have it by extinguishment, as otherwise, *&c.* M. 9 E. 3. 56.

269. And the same law is of exchange of land and advowson by deed indented for a release unto a usurper of his right * unto * [120] another advowson, when his incumbent hath been in the possession of the Church by six months; *&c.* Yet against that it may be said, that the exchange in the first of these two latter cases is not good, because by such release, *&c.* the estate of the releasee is not altered; and by such release, he doth not take more issues and profits of it, *&c.* And against that it may be said, that now he hath the land without incumbrance of action, and so it is more profitable unto him, and of more value to be sold, *&c.* *Ideo quare certitudinem inde, &c.* And a rent descended unto M. 3 E. the issue in tail, by way of extinguishment, 3. 5. shall be said to be assets, *&c.*

270. And therefore, if father tenant in Grant 29. tail and son be, and the father is seised of a rent charge issuing out of the land of the son in fee, and discontinueth the land entailed with warranty, now this rent descended unto the issue by way of extinguishment, shall be assets for the value thereof, because it is valuable, and as great advantage unto

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him to have the same extinguished, as to have so much rent in possession, and to be discharged of that rent; but a right of cure or of action, or a use of lands or tenements, &c. descended unto the issue in tail, shall not be asslets, &c. because that such asslets are not taken by the equity of the Statute of *Gloucester, cap. 3.* See the Statute, &c.

* [121.] But exchanges * are at the common law; and therefore common reason shall serve for them.

271. And if disseisor and disseisee be, and the disseisee release his right unto the disseisor in exchange for another acre of land, &c. it is a good exchange; *causa patet.* But if the disseisee had granted his right unto a stranger who had nothing in the land exchanged for one acre of land, this exchange had not been good; for that the stranger took not by the grant, &c.

M. 3 E. 4.
20.
E. 7 H. 4.
43.

272. And if the heir enter after the death of his father, and assign dower unto his mother in exchange for another acre of land, it is a void exchange; because that the tenant in dower is not in the land which she hath for her dower by the heir, but by her husband, &c.

273. And if disseisor and disseisee be of one acre of land, and the disseisor exchange the same acre of land with the disseisee for another acre of land, &c. this exchange is not good, if it be not by deed indented, or by fine, &c.

274. And it is to be known then an exchange is good, notwithstanding that the things

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things exchanged be not of equal value; as Mr. *Littleton* hath well shewed in his first book in the Chapter of TENANT for YEARS, &c. Lit. §. 62. And it is to know, that in this book are divers cases expressed and determined against the opinion of some men: *Sed scrutatis Libris non paucis, et fide non data unius hominis vel duorum hominum dictis, vel uni libro, &c. Et tunc autoritatum sufficientium huic libello concordantium compertum habebis.*

* 275. Now is to shew, what estates the parties to exchanges ought to have. And as to that know, that the estate of either party unto the exchange ought to be equal, as Mr. *Littleton* hath well declared. And therefore, * [122]
T. 38 E.
 if an estate for life be expressed unto one party upon the exchange, and no estate be expressed unto the other party, &c. the exchange is not good: For notwithstanding that both parties to the exchange have an estate of freehold, yet the estate for the term of another man's life is not so high an estate of freehold, as the estate of him who hath an estate for the term of his own life, &c. 3. 15.
T. 4 E. 4.
12.

276. But if lessee for life be of one acre of land, and he giveth one other acre of land unto his lessor in fee tail for a release of all his right in the acre which he holdeth for term of his life, to have and to hold the same acre unto him and the heirs of his body begotten, this is a good exchange.

277. But if *J. S.* and *T. K.* are enfeoffed of one acre of land, to have and to hold the same acre to them, and unto the heirs of *T. K.* and *C. D.* give unto them another

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acre of land, to them in fee, in exchange for the same acre of which they are enfeoffed as aforesaid. It is said, that this is no good exchange but for the moiety which appertaineth unto *T. K.* because that he hath fee in the moiety of the acre whereof he was enfeoffed,

- * [123] * executed to such intent, or to put and vest the same in another person by alienation, that is to say, by feoffment, exchange, &c. and as unto the moiety which appertaineth unto *J. S.* the exchange is not good, because he departs but with the freehold, &c. and he is to take a fee-simple in the other land, &c. But against that it may be said, that the exchange is good for all; because that the fee-simple of the whole acre of *J. S.* and *T. K.* was in *T. K.* &c. and then when *J. S.* and *T. K.* join in exchange of the same acre, the whole acre with the fee shall pass to *C. D.* so that he hath fee-simple executed in the same acre, and *J. S.* and *T. K.* have like estate executed in the acre of land, which

M. 30 E. 4. *C. D.* gave in exchange unto them, as they had in the other land; and so the estates of the parties in the exchange are equal, &c.
3. *Ideo quære.*

278. And also it may be said, that in the same case the exchange is void in all; for it is argued before, that the exchange is void for the moiety unto the said *J. S.* and when it is void in part, it is void in all, &c. As to that it may be said, that that reason is to take effect, where the exchange is made of things which are intire, &c.

T. 9 E. 4.
22.

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279. If a man seised of lands in fee, in the right of his wife, give the same lands in exchange for other lands in fee, &c. this exchange is good until it be defeated by the wife or her heir, &c. So * shall it be if the husband and wife join in an exchange, &c. And if lessee for years of land, and his lessor, join in exchange of the lands leased in fee unto a stranger for other lands in fee to each party, it seemeth to some that this exchange is void unto the lessee, and good for the whole land unto the lessor; for the lessee for years may surrender his land unto his lessor of the land by word; then when the parties, viz. the lessor and the lessee join in exchange in fee, it shall be said the surrender of the lessee to his lessor, as well as if lessee for years of land and his lessor join in a feoffment of the same land leased unto a stranger, &c. and so, &c. *tamen quere certitudinem.* T. 9 R. 4.
22.
2 E. 2. 17.

280. If disseisor and disseisee be of one acre of land, and they join in exchange of the same acre of land in fee unto a stranger for another acre of land in fee, and the exchange is made of the land, this exchange is void to the disseisee, and good to the disseisor for the whole land; for the disseisee at the time of the exchange had nothing in the land but a right, the which he could not give or grant unto a stranger; but may vest it in the person of the tenant of the freehold of the same lands divers ways, by extinguishment, &c. And at the time of the exchange, he to whom the exchange was made of the land, had nothing in the land, &c.

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281. If two jointenants are in fee of one
 * [125] acre of land, and they exchange the * same
 acre of land in fee with a stranger for another
 acre of land, to have and to hold one moiety
 of the same acre unto one jointenant in fee,
 and to have and to hold the other moiety of the
 same acre unto the other jointenant in fee, this
 is a good exchange, &c. So shall it be, if two
 tenants in common of land join in exchange
 with a stranger for another acre, to have and
 to hold the same acre unto them jointly, &c.

282. And if the disseisor of one acre of
 land enfeoff a stranger of the same acre of
 land, and the feoffee give unto the disseisor
 another acre of land in fee in exchange for a
 release of all his right in the acre of land
 whereof he was disseised, this is a good ex-
 change; for notwithstanding that the heirs of
 the feoffee are not expressed in the exchange,
 the right of the disseisee is extinct in the feof-
 fee by force of the release according to his
 possession, which he had at the time of the
 release made unto him, the which was in fee,
 and so the exchange is good.

283. But if lord and tenant be by fealty
 and twelve pence, of one acre of land, and
 the tenant grant another acre of land unto the
 lord in exchange in tail, for a release of all
 his right in the tenancy, &c. it is no good
 exchange; because that by the release, the
 fee-simple of the lord is determined; and the
 lord shall not have but an estate in tail with
 land given unto him in exchange, for the re-
 lease of his right, &c. So shall it be of all
 the like cases, &c.

E X C H A N G E S.

* 284. Now is to shew in what time the estates of exchanges ought to be executed. And as to that know, that the estates of exchanges ought to be executed in the lives of the exchangers, otherwise their heirs shall avoid them, if not that it be in special cases. [126]

285. And therefore, if an exchange of lands be between two, and one enter according to the exchange, and the other exchanger die before any entry made by him, he who entered shall not be the first person who shall defeat the exchange: But if the heir of such exchanger who entered not, enter into the land into which the other hath entered by force of the exchange, and answer him as he may; then he, viz. he who is put out, may enter into the land which he gave in exchange. M. 9 E. 4. 39. E. 45 E. 3. 10.

286. And it is to be known, that at all times during the lives of the parties unto the exchange, either of them may enter according to the exchange, at what time he please, if the possession be not devested out of them, by an elder title, &c. as by an entry for a condition broken, or by an entry by the disseisor or his heirs, if those who made the exchange have, or any of them hath, the land so given in exchange by disseisin, &c. or by recovery upon an elder title, &c. or by alienation in mortgage, made before the exchange made; nor by any other lawful cause, &c. M. 15 E. 4. 3.

287. And some have said, that in some case, the party unto the exchange shall enter, if the possession of the land be devested out of the other party unto the exchange, notwithstanding that it be not devested out of him by an

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an ancienter title. As put the case: An exchange be made of land in fee between an Abbot and a layman, and the Abbot enter into the land of the layman, by force of the exchange, and the layman doth not enter into the land, but in exchange by the Abbot, and the lord of whom the land is holden, in which the Abbot hath entred by force of the exchange enter into the same land within the year and the day after the exchange, as into land aliened in mortmain: In this case they say, that the Abbot shall retain the land which he put in exchange in his possession; and the other party to the exchange shall not have his own land again which he himself put in exchange unto the Abbot; because that the possession thereof is out of him in the person of the Abbot by his own act; and the same acre the Abbot cannot retain in his possession against the lord of whom it was holden; &c. But against that it may be said, that for as much as the Abbot hath executed the exchange, he shall for no cause disagree unto the same; &c. if not that it be in very special cases. And every exchange is conditional. *Idem quere, &c.*

288. And it is to know, that if two parsons of two several Churches, exchange * their benefices, and resign them into the hands of the ordinary to the same purpose, and the patrons make presentments accordingly, and one of the parsons is admitted, instituted, and inducted, and the other parson is admitted and instituted, but dieth before induction, the other parson shall not keep the benefice in which he is

* [128]
M. 45 E.
3. 10.

E X C H A N G E S.

is inducted; for the exchange is not perfected, because it is not executed, &c.

289. And if the reversion of one acre of land be exchanged for another acre, &c. and the exchanger of the reversion die before attornment made unto him, his heir may enter upon the other exchanger, and put him out of the land put in exchange by his father, &c.

H. 6 E. 2.

12.

H. 14. E.

2. 13.

290. But if a man seised of land in fee in the right of his wife, and he and his wife exchange those lands for other lands in fee, and the exchange is executed, and the husband die, and the wife enter into the lands taken in exchange, now she shall defeat the exchange, &c.

16 E. 4.

291. But in the same case, if the husband alone had made the exchange, the wife cannot avoid it, notwithstanding his entry in the same lands, after the death of her husband, for then by her entry he is not seised of the lands by force of the exchange, because that he is not party thereunto, and she cannot be privy thereunto, &c.

* 292. If an exchange be had betwixt two men of lands, and before their entry by force of the exchange they are disseised of the land put in exchange, and the disseisor dieth thereof seised, and the parties unto the exchange enter into the lands put in exchange accordingly, and put out the heir of the disseisor, this entry cannot be said an execution of the exchange, because that their entry was taken away by the descent, &c. But if the disseisees had recovered the same lands against the heir of the disseisor by several writs of entry *en le per*,

* [129]

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per, &c. and had them in execution, then they might enter according to the exchange, and this entry shall be a good execution of the exchange; &c.

293. And if a man be seised of land in the right of his wife in fee, and thereof enfeoff a stranger, and take back an estate unto him and his wife, and unto a third person in fee, and they three join in exchange of the same lands in fee, for other lands unto a stranger in fee, and the exchange be executed, and the husband die, and the wife doth occupy the land taken in exchange with the third person, by this occupation of the land she shall be excluded to have any part of the other land which was given in exchange for this land, &c.

294. And if tenant in tail be of one acre of land, and he exchange the same acre for another acre with a stranger in fee, and the exchange is executed, and the tenant in tail die, and his issue enter into the land taken in exchange, by his father, he hath perfected the exchange during his life, &c.

T. 16 B. 295. And if an infant exchange land, &c.
 3. 2. and occupy the land taken in exchange, when
 M. 4 E. 2. he cometh of full age, the exchange is executed, &c. And it hath been said, that if a
 3. man be seised of a manor, viz. of one moiety
 4. 3. in tail, and of the other moiety in fee, and
 H. 12 H. giveth this manor in exchange for another
 4. 12. manor in fee, and the exchange is executed, and the tenant in tail die, and the issue in tail (disagreeing unto the exchange) enter into the whole manor put in exchange by his father, the exchange is avoided for the whole, because

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because the exchange was made of one intire thing for another intire thing; *tamen quare.* For in the same case, if the exchange had been impleaded of parcel of the same manor, whereof one moiety was in tail, &c. and had vouch- ed; and the voucher entered into the warranty, and lost, &c. he shall not recover in value but for the portion which is lost, &c.

296. And if a man be seised of two acres in fee tail, and of another acre in fee, and exchange these three acres with a stranger for another acre in fee, and the exchange is ex- ecuted, and the tenant in tail die, and the issue in tail (disagreeing * unto the exchange) * [131] enter into all the three acres put in exchange by his father, his entry is lawful in all the tailed land, and for that land the exchange is avoided, &c. But into the third acre of which his father was seised in fee his entry is not law- ful, and for that acre the exchange shall stand. So an exchange is avoided in part, and shall stand in part, &c. *Quare.* If the other ex- changer can enter into any parcel of the land by him put in exchange, because there is not care of the value.

297. And if J. S. be seised of white acre in fee, and he exchange the same and black acre wherein he hath nothing with a stranger, for another acre in fee, &c. the exchange is void as unto black acre: But notwithstanding it is said J. S. shall have the whole land which was put in exchange by the stranger; for they say, there is no care of the value of the land, &c. *quod verum est, &c. tamen quare;*

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quare; for it seemeth it is not within the same reason, &c.

298. And if a man of unsound memory being seised of land in fee, exchange the same land with a stranger for another acre of land in fee, and the exchange is executed, and he of unsound memory die, and his heir enter into the land taken in exchange by his father, now he shall not avoid this exchange, &c.

• [132]

* 299. And it is to be known, that in some special case, an exchange may be executed in the parties to the exchange, and may be avoided by the same parties. As put the case: A

T. 9 E. 4.

23.

T. 15 E.

4. 3.

man granteth unto me common for six beasts in his meadow, &c. in exchange for a way over my land for to carry the hay growing upon the same land unto his house in *Dale*, and I grant the same way unto him in exchange for the common, &c. and the exchange ought to be by deed indented, &c. and I use the common by force of the exchange, and the other party to the exchange shall use the way according to the exchange; and afterwards he will not suffer me to use my common; then I may not suffer him to use the way; and the reason is, because they are yearly executory, &c. The same reason may be made, if a rent be exchanged for a rent, &c. *Idem quare.*

D O W E R.

300. **N**OW are we to speak of dower.
 And as unto that know, that as
 Mr. *Littleton* hath well shewed : Inst. 33.
 and set forth in his first book, there are five ^{b.}
 manner of dowers, which appear in this
 chapter of DOWERS ; and many and diverse
 good cases concerning dower, are there put
 by my Lord *Littleton*. And also there are
 so many good and necessary cases concern-
 ing dower put upon the writs of dower, in
Natura Brevium, with the additions, that a
 man can hardly speak any thing more con-
 cerning dower beyond what is shewed and
 said in the same book. And yet notwith-
 standing that, some thing shall, by the grace
 of God, be said here concerning dower.

* 301. And as unto dower at the com- * [134]
 mon law, it is to know, where husband and
 wife are ; and the husband is seised of such
 estate during the marriage, that the issue
 which by possibility they may have between
 them during the marriage, by possibility may
 inherit by the common law ; the wife shall
 be endowed if the estate and possession which
 the husband hath be not lawfully avoided,
&c. if not that it be in special cases, *&c.*

302. And therefore, if tenant in general
 tail take a wife, and enfeoff a stranger, and
 take back an estate unto him and his wife
 in

D O W E R.

M. 14 E. 4. in special tail, and the wife die and he mar-
 30. rieth another wife, and hath issue and dieth,
 the second wife shall not be endowed, yet
 the issue is remitted unto the general tail:
 But the second wife shall not have dower
 thereof, because that her husband was not
 seised of such estate; *Et*. during the mar-
 riage between them two; *Et*.

303. But if lord and a woman tenant be
 of one acre of land by fealty and twelve penes-
 rent, and they intermarry, and the husband
 die, the wife shall be endowed of the third
 H. 1 E. 3. part of the rent by way of retainer; and yet
 6. the husband was not seised thereof in deed
 during the marriage celebrated betwixt them;
 for by the marriage betwixt them, the feig-
 nory was in suspense, and so continued du-
 * [135] ring the marriage, as to bring an action,
 so as it did amount unto a possession in law;
Et.

304. And of seisin and possession in law,
 the wife shall be endowed, *Et*. And if a
 man seised of land, tenement or rent, *Et*. in
 fee, take a wife, and during the same mar-
 riage, he marrieth another wife, and the hus-
 band die, leaving both wives, the latter wife
 shall not have dower; because the marriage
 betwixt them was void, *Et*.

T. 39 E 3. 305. And if a woman take a husband,
 15. and leaving the same husband, she marrieth
 1 Inst. 33. another husband, who is seised of land in fee,
 2. and the second husband die, she shall not
 have dower of his land; *causa patet*. But if
Miles at Sale make a contract of matrimony
 with *A. D.* and before the marriage solemn-
 nised

D O W E R.

nised betwixt them, she marieth with *J. K.* who is seised of land in fee, &c. and *J. K.* die, she shall have dower as wife of *J. K.* if the marriage be not avoided; for it was but voidable, &c.

306. And if a man seised of land in fee, make a contract of matrimony with *J. S.* and he die before the marriage solemnised between them, she shall not have dower; for she never was his wife. And it hath been holden, in the time of King *Henry* the third, that if a wife had been married in a * chamber * [136] that she should not have dower by the common law; but the law is contrary at this day.

307. And if a man seised of land in fee take a wife, and enter into religion, and is professed, his heir shall inherit presently; yet his wife shall not have dower during the natural life of her husband; for the husband cannot be professed in religion during the marriage without the assent and agreement of his wife; and if he be so without her assent, the profession is void, &c.

308. And it is to know, that if tenant in general-tail take a wife, and hath issue by the same wife, and the husband be attainted of felony, and die, the wife shall not be endowed, and yet his issue which he hath shall inherit; but he shall not inherit by the common law, but by the statute of *Westminster* 2, cap. 4.

309. And it is to know, that if father and son be, and the father is seised in fee of one acre of land, and exchange the same acre

D O W E R.

for another acre with a stranger in fee, and the exchange is executed, and the father die, and the son take a wife and enter into the acre, taken in exchange by his father, and the party to the exchange who surviveth is impleaded of the acre taken in exchange by him, &c. and vouch to warranty the son, who entereth into the warranty and loses, &c. and the demandant hath execution

• [137]

* against the tenant, and the tenant owes in value against the vouchee of the acre, which the tenant put in exchange unto the father of the vouchee, &c. and the vouchee dieth, his wife shall not have dower of this acre put

T. 5 E. 3. in execution; because that the recovery, in value shall have relation unto the time of the

129.

M. 4 E. 3. exchange made, which was made before the title of the wife to have dower, and so the possession of the husband is avoided by an older title before the marriage.

52.

310. And if two men be coparceners of land in gavelkind, and they make partition, and one of them taketh a wife, and the other is impleaded of his part, and prayeth in aid of his coparcener, and he join to him in aid, and the demandant recover, and the tenant hath *pro rata*, of that which remaineth in the possession of his coparcener, and the coparcener of whom the aid was prayed dieth, his wife shall not have dower of that which the other coparcener had *pro rata* because that the title of the coparcener who had *pro rata* shall have relation unto the time of the death of their ancestor, &c.

B O W E R,

311. And if a man by deed indentured en-
feoff another of land upon condition to be
performed on the part of the feoffee; and the
feoffee take a wife, and the feoffor perform
the condition, and the feoffee die, his wife
shall not have dower of this land, &c.

312. And if I enfeoff a man of land upon condition that he shall enfeoff me of the same land before the feast of St. Michael's next ensuing; and the feoffee take a wife, & not rendering any feoffment unto me before the same feast; and I enter, and the feoffee die, his wife shall not have dower against me; because that my entry shall have relation unto the time of the feoffment, &c.

313. But if lord and villain be; and the villain take a wife, and purchase land in fee, and presently after the possession entered in the villain by force of the purchase the lord enter, and the villain die, his wife shall have dower against the lord; because that his title doth not begin but by his entry, and the title of the wife to have dower was before the same, &c.

314. But if lord and wife be, and they intermarry, and the lord is seised of land in fee, and the lord die, she shall not have dower against the heir of the lord, because she is his wife. But if the lord had enfeoffed a stranger of the same land, she shall have dower against the feoffee, because she is not his wife. But otherwise is it if she had been a wife to the lord of which the feoffment was made, &c.

D O W E R.

1 Inst. 31. 315. And it is to know, that it hath been

a. holden in divers books, as in three or four

* [139] books, that if there be grandfather, * father

and son, and the grandfather is seised of one

acre of land in fee, and taketh a wife, and

the father taketh a wife, and the grandfather

dieth, and the father entreth and dieth seised,

and the son doth enter and endoweth his

grandmother, and the grandmother die, the

wife of the father shall not be endowed of

the land whereof this grandmother was en-

dowed, because that a woman shall not be

endowed of a reversion expectant upon a free-

hold; and the possession of the freehold by

the endowment is vested in the grandmother

by a title, before the title of the father unto

the freehold; But if the grandfather had en-

tered the father of the same land during

the marriage betwixt the father and his wife,

in that case, after the death of the grand-

mother, the wife of the father should have

dower of the same land of which the grand-

mother was endowed; because the possession

of the father which gave title to his wife

was in the life of the grand-

father, at which time the grandmother could

not demand dower; so that by the endow-

ment of the grandmother, the possession of

the father is not avoided; for the grand-

mother had right unto the possession but

from the time of the death of the grand-

father, &c.

* [140] * 316. And if there be grandfather, fa-

1 Inst. 31. ther and son, and the grandfather be seised

b. of one acre of land in fee, and taketh a wife,

8E.3.293. and

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and the father take a wife; and the grandfather dieth, and the son entreth and endoweth his mother, against whom the grandmother bringeth a writ of dower, and recovereth, and hath execution, and the grandmother dieth, in this case, the mother may enter into the land, recovered by the grandmother against her, and retain the same land against the donee, because she was endowed thereof by him: And so shall it be if the mother had recovered against him in a writ of dower.

317. And it is to know, that if a man be seised of land in fee, and giveth the same land in tail unto a stranger, reserving to him and his heirs twelve pence rent; and for default of payment, a re-entry, &c. And the donor taketh a wife and dieth, and the heir of the donor entreth into the land for the condition broken, the wife of the donor shall not be endowed of the rent, nor of the land, &c. And the wife of the donee shall not be endowed; and yet if donee of land in general tail take a wife, and dieth without issue, and the donor doth enter, the wife of the donee shall have dower; and yet the estate tail which made her title is determined, &c.

318. And it is to know, that sometimes the wife may choose to be endowed of one kind, or of other land, &c. or of seignory, or of a tenancy, &c. or of land, or of a rent charge, or of a rent seek issuing thereout, &c. but in such cases she shall not have dower of both; if not that it be in special cases, &c.

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M. 23 E. 3. 130. And therefore, if a man seised of one acre of land in fee, take a wife and exchange the same acre of land with a stranger, for another acre of land, and the exchange is executed, and the husband dieth, now it is at the liberty of the wife to have dower of the acre, which the husband put in exchange, or of the acre which the husband took in exchange; but she shall not have dower of both acres.

M. 13 H.

3.

Dower 93.

3. 120. And if there be lord and tenant by fealty and twelve pence rent, and the lord taketh a wife, and purchaseth the tenancy in fee, and dieth; in this case, it shall be at the liberty of the wife to be endowed of the feignory, or of the tenancy, &c. So shall it be if a man seised of a rent-charge in fee, take a wife, and purchase the land in fee whereon the rent is issuing, and dieth, it shall be at the liberty of the wife to be endowed of the land, or of the rent, &c.

I 4

3. 121. But if there be lord and tenant by fealty, and the lord taketh a wife, and the tenancy escheat unto the lord, and he enter and die; in this case, it shall not be at the liberty of the wife to have dower of the feignory, or of the tenancy; but she shall be forced to take her dower of the tenancy:

[8 2]

* [142]

And the reason is, * because that the feignory is determined during the coverture, by act of law; and it is no disadvantage unto the wife to be endowed of the tenancy; for if she be put out of possession of part thereof by a more ancient title, the feignory shall be revived for so much; and if all the tenancy be recovered

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by a more ancient title, then the feignory shall be revived in all, &c. and then she may have dower of the feignory, &c.

322. If there be lord, mesne, and tenant H. 22 E.
by fealty and twelve pence rent, and the 3.
mesne taketh a wife, and releaseth all his Dow. 131.
right unto the tenant, and dieth, the wife shall be endowed of the mesnalty; so shall it be in such case, if the tenant finding the mesne, &c. And if the disseisor of one acre of land enfeof a stranger of the same acre with warranty, and the feoffee taketh a wife, and the disseisor bringeth a writ of entry *in de per*, against the feoffee, and he vouch to warranty his feoffor, &c. and each recovereth against the other, and have execution, and the feoffee dieth, the wife of the feoffee shall have dower of the land which her husband recovered in value, and not of the land which he lost; *argu. per et.*

323. If there be lord and tenant by fealty E. 33 E. 3.
and twelve pence rent, and the lord take a 137.
wife and dieth, and his wife is endowed of the third part of the rent, and the tenant dieth without heir, so * as the tenancy doth
* [143]
escheat, in this case the wife shall not be endowed of the tenancy, notwithstanding that it come in lieu of the feignory; because it was not in the possession and seisin of the husband: But she shall retain the rent which was assigned unto her in dower, as a rent-sock, and shall distrain of common right, &c.

324. And it is to know, that some persons hold opinion that, in some special case,

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a wife shall be endowed of land, and also of rent issuing of the same land: And therefore they say, that if a man be seised of four acres of land in fee, and taketh a wife, and enfeoffeth a stranger thereof by deed indented; and rendring unto him and his heirs three shillings rent with clause of distress, and dieth, and the feoffee endoweth the wife of the feoffor of the third part of the land, the land which is assigned unto her in dower is discharged of this rent, and the whole rent is issuing out of the residue of the land: And the reason is, because that the wife shall be endowed of the best possession which her husband hath during the coverture; and the husband was seised of this land during the coverture discharged of the rent; and so, &c. And this rent is a rent-charge, and doth not come in lieu of the land. And the husband had an estate in the rent during the coverture, &c.

- * [144] * 325. If a man seised of three acres of land in fee, taketh a wife and dieth, and a stranger abate in one of the acres, and is seised in fee of two other acres, and marrieth the same woman, and enfeoff a stranger by deed indented of the three acres, yielding to him and his heir three shillings rent with clause of distress, and dieth, now all the three acres are charged with the rent. But if the heir of him after whose death the abatement was, recover the acre of land in which the abatement was, and assign the same acre unto the wife for her dower; yet the wife may have dower of the rent; for this acre is as if it were

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were never charged, and the whole rent is issuing out of the other two acres, &c.

326. And if a man seised of three acres take a wife, and enfeoffeth a stranger by deed indented of two of the three acres, rendring two shillings rent unto him and his heirs, with clause of distress, and the wife is endowed of the third acre, which remaineth as allowance of the other acres; yet they say, that she shall have dower of the rent E. 5 R. 2. which is issuing out of the other two acres; 143. *tamen quere.* For it is against the opinion of divers men, and against conscience, 14. &c.

227. And it is to know, that if a man grant unto a rent-charge in fee upon condition, that if I die, my heir within age, that the rent shall cease * during the nonage of * [145] my heir, because it is a condition indeed annexed unto her estate; at the beginning of which estate the wife claimeth dower, &c.

328. And know, that if a man be seised of twenty acres of land in fee, and taketh a wife, and enfeoffeth a stranger of the land, and the feoffee build thereupon, a castle or a mansion house, or other buildings, or other-
~~wise~~ doth improve it, so as it is worth more by the year than it was in the possession of the husband, the wife shall not have dower, M. 17 H. but according to the value it was at in the 3. 192. time of the husband. And yet if a disseisor build upon land which he hath by disseisin, and the disseisor enter, he shall have the building, &c. And so shall it be, if the

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feoffor upon condition broken, &c. the difference is apparent.

329. But if a man seised of land in fee upon which there is building, that by reason thereof is worth four-pence more by the year, and he taketh a wife, and enfeoffeth a stranger, and took down the building, and the feoffor dieth, the wife shall have dower according to the value of the land as it was at the time of the death of the husband; and hath remedy for the taking away of the building before the death of the husband, notwithstanding that the building were upon the same land in the possession of the husband during the coverture; for the wife hath not right to have dower before the death of the husband, &c. *tamen quære* of this case.

* [146] * 330. And it is to know, if a man be seised of three manors in fee, and take a wife, and granteth a rent-charge issuing out of all the three manors, and dieth, and the wife taketh one manor by assignment of the heir for her dower, in allowance of all the three manors; now two parts of this manor doth remain charged to the distress of the grantee, notwithstanding that the grant of the rent-charge was made during the marriage: And the reason is, because that as to the two parts she had taken her dower against common right; for according to common right, she ought to have the third part of every manor for her dower: But in the same case, if she had recovered her dower, and such assignment had been made unto her by the Sheriff, she

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she should have holden the same discharged;
causa patet.

331. But if a man be seised of three advowsons of three several churches, and taketh a wife, and granteth unto a stranger that he shall present to the next avoidance of the three Churches which shall first become void, and the grantor dieth, his wife bringeth a writ of dower against the heir, before any Church become void, and recovereth; and the sheriff doth assign unto her the advowson of one Church for her dower, in allowance of the other Churches; which advowson assigned unto her doth first become void after the grant made by the husband, and the avoidance happeneth after the assignment of the dower. It seemeth unto some in this case, that * the wife shall not have this avoidance, * [147] but the grantee shall have the same; because that she is endowed against common right; for of right she ought to have but the third avoidance of each advowson of each Church.

332. And notwithstanding that the assignment be made by the sheriff, it shall not prejudice nor out the grantee of his right, because he is a stranger unto the assignment; and also he cannot otherwise take advantage of his grant, but only at this avoidance; *tamen quære.* But otherwise is it in case of a grant of a rent-charge out of three manors; for when the assignment is made by the sheriff of one manor in allowance of all the manors, the grantee may distrain for the whole rent in the other two manors, and in every part of them; and it shall not

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be more prejudicial unto the heir this way, than the other way, &c.

333. And it is to know, that a woman shall never be endowed, if the freehold and the inheritance be not in the husband *simul et semel* during the marriage.

334. And therefore, if lands be given unto two men, and unto the heirs of the body of one of them begotten, and he who hath fee tail take a wife, and dieth, leaving him that hath the freehold, notwithstanding that he that hath the freehold die, the wife shall not have any dower; because the estate tail was not executed to all purposes in her husband: And yet if a stranger hath entred after

* [148] his death who had the * freehold, the issue of
T. 11 H. the donee shall have a *formedon en le descend.*
7. 3. against him, and shall alledge the exples in his father; and so to such intent the estate was executed in the donee, &c.

E. 48 R. 3. 15. 335. And if the husband hath an estate in land, &c. by fine upon a grant, and render for life, the remainder unto J. S. his son in tail, the remainder unto the right heirs of the husband, and the fine is executed, if in this case the husband die, being J. S. his son, or any issue by him begotten, his wife shall not be endowed, notwithstanding that J. S. the son dieth without issue after the death of the husband leaving the wife; *causa patet*. But if a lease be made of land for years, the remainder unto J. S. for life, the remainder unto the right heirs of J. S. and J. S. take a wife and dieth during the term of

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of years; his wife shall recover dower; but execution shall stay during the term of years.

336. And if a man seised of one acre of land unto the husband for life, the remainder unto the husband in fee, and the husband die during the years, the wife may recover dower: But execution shall stay until the term be determined, for this measure remainder for years shall be no impediment; but that the freehold was sufficiently joined in the husband *simul et semel*, for the wife to have dower, &c.

* 337. If land be leased unto *A.* and *B.* * [149] for the life of *C.* the remainder unto the right heirs of *A.* and *A.* take a wife, and *C.* dieth leaving *A.* and *B.* and *A.* dieth leaving *B.* his wife shall be endowed; because that *Cestuy que vie* died, living *A.* the husband, so as the freehold and inheritance are joined in the husband during the coverture.

338. And if lands are given unto *I.* and *H.* ^{30 E.} *Alice* his wife in special tail, the remainder ^{3. 4.} unto the right heirs of the husband; and the wife die before issue betwixt them, and the husband take another wife, and dieth, his second wife shall be endowed, &c.

339. If there be lord and tenant by fealty and twelve-pence, and the tenant lease the tenancy for life unto a stranger, and the lord take a wife, and the tenant die without heir, and afterwards the lord dieth before the lessee for life, the lord's wife shall not have dower of the tenancy; but she shall be endowed of the rent of the feignory, &c.

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340. And if grantee of a rent in charge in fee take a wife, and the grantor lease the land out of which the rent is issuing unto a stranger for life; and the grantee of the rent purchase the reversion of the same land, and the tenant for life attorn, and the grantee of the rent dieth leaving the tenant for life, his wife shall be endowed of the rent, but not of the land; because the freehold and inheritance were not in the husband *simul et semel* during the coverture, &c.

* [150]. * 341. Now is to shew of what things a woman shall be endowed: And as to that, see NATURA BREVIUM, with the additions upon the Writs of Dower, &c. Of a common without number a woman shall not be endowed, &c. And if a man grant unto me and my heirs to take yearly so many estovers in his wood in *Dale*, as I and my heirs will burn in the same manor of *Dale*, and I take a wife and die, my wife shall not have dower of the estovers, &c.

1 Inst. 33. 342. But a woman shall be endowed of a mill, as to have the third profit of the mill, &c. because the mill cannot be severed. And a woman may have a rent allowed unto her out of a house for her dower of the house, or she may have a chamber of the same house assigned unto her, in allowance of her dower of the house. And a woman shall be endowed of a villain in gross, as to have the services every third day. And a woman shall be endowed of an advowson in gross, as to have the third presentment. And a woman shall be endowed of a bailiwick, as to have the

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the third part of the profit thereof, and in such case she shall be contributory unto the third part of the charge of the office. And so in the like manner she shall be endowed of affairs, *mutatis mutandis*, &c. And a woman shall have dower of a common in gross which is certain.

T. 2 H.
6. 11.
E. 13 E. 2.
161.
T. 17 E.
2. 163.
H. 12 E.
2. 157.

343. And if a man grant unto me and my heirs to take yearly out of meadow three loads of hay, and I take a wife and die, my wife shall have dower thereof, &c. *tamen quære*. And a woman may be endowed of a villain regardant, and of an advowson appendant, &c.

M. 11 E.
3. 85.
M. 15 E.
3. 81.
T. 4 E. 9.
32.
* [151]

344. But if a man be seised of a manor in fee, unto which he hath common appendant, and taketh a wife and dieth, and two acres of land, parcel of the manor, are assigned unto her for her dower, in allowance of all the manor, it seemeth in this case, that she shall not have common appendant unto these two acres; for during the time they are in the possession of the woman, they are not parcel of the manor; and the common is appendant unto the manor; *tamen quære*. But if the moiety of the manor had been assigned unto the wife for her dower, by the name of the moiety of the manor, it seemeth clear, that she shall have common appendant to this moiety.

345. If there be lord and tenant by fealty and twelve-pence, and twelve bushels of wheat, &c. and the lord take a wife and die, his wife shall have dower of the twelve-pence

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rent, and of the twelve bushels of wheat, &c.

346. But if a man hold of me and my heirs by homage fealty, and to find a Chaplain to sing every *Friday* in the week yearly in the Church of *St. Nicholas* in *Dale*, in the County of *Middlesex*, at such an altar for the prosperity of me and my friends, and for my
 * [152] * ancestors souls, and I take a wife, and die, my wife shall be in dower of no part of this seignory; and so shall it be in all the like cases, &c.

T. 4 E. 3. 347. But a woman shall be endowed of
 32. land, tenement, woods, &c. rent-charges,
 1 Inst. 32. rent-secks, &c. But if annuity be granted
 a. unto me and my heirs, by the grantor and his heirs, and I die, my heir shall have this annuity as he granted; as also his heirs, if they have lands or tenements unto the value in fee-simple descended unto them; and yet my wife shall not have dower of it; *causa patet*.

348. And if a man seised of one acre of land, lease the same for life unto a stranger,
 E. 8 R. 2. reserving two shillings rent to him and his
 184. heirs, and the lessor taketh a wife, and dieth, the wife shall not be endowed of this rent; and yet the heir of the lessor shall have the rent with the reversion, and it shall be assents in a *formedon en le descend*. brought by the same heir, &c. Also the wife of the lessor shall not be endowed of a rent reserved upon a lease for years unto the lessor and his heirs, &c. But the wife of the donor shall be endowed of a rent reserved unto the donor and his heirs upon a gift in tail of land, &c.

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349. But a woman shall not be endowed of a use of land or rent, notwithstanding that it was an inheritance in her husband, which the issue, which by possibility they might have betwixt them, might inherit, &c. And it is to know, that in many cases a woman by her own act may * prejudice herself in her dower, * [153] as if she commit treason, murder, felony, for which she is attainted, &c.

350. And if a man seised of black acre in fee, taketh a wife and dieth, and the wife M. 2 H. accept of a lease for life of black acre, &c. 4. 7. she cannot demand dower of the same acre; for that she cannot demand it against herself. *Quere*, If she accept of a lease for years of black acre, whether by this acceptance she shall be excluded of her dower during the term, for ever, or for any time, &c.

351. And if a man seised in fee of white H. 6 H. acre, lease the same acre unto a sole woman 4. 7. for forty years, and the lessor intermarrieth with the lessee, and the husband suffer the term to continue as it was without any alienation, or other thing done therewith, and dieth within the term, it is said that in this case; the wife may have her dower presently, notwithstanding that the term doth continue; because that at the time of the lease she was intitled to dower: And notwithstanding that the term doth continue, it shall not cast her of her dower, until the term be determined; because if it shall be prejudicial to any person; it should be unto the prejudice of the wife herself.

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- T. 11 E. 352. And if there be husband and wife,
 3. 63. and lands are given unto them, and unto the
 heirs of the husband, and the husband dieth,
 and the wife bringeth a writ of dower before
 * [154] any agreement, and that * after the death of
 E. 1 E. 3. the husband, in this case, she shall have
 15. dower; for she shall not be compelled to
 take by purchase against her will, and that
 before the death of the husband; and the
 bringing of the writ of dower is a disagree-
 ment to take by purchase; which disagree-
 ment shall have relation unto the time of the
 purchase. *Quere*, If the purchase had been
 made unto the husband and wife, for the life
 of the husband, the remainders unto the right
 heirs of the husband, because that estate of
 the wife had determined by the death of the
 husband: And it hath been said, that a disa-
 agreement cannot be unto an estate, after the
 estate determined.
353. But it saitheth that in this case, the
 wife may disagree by bringing of a writ of
 dower, notwithstanding that the estate were
 determined; for otherwise, by such means,
 the wife might be outed of her dower in
 every purchase made by her husband; and yet
 during the marriage, she is always by law
 under the government of the husband in such
 manner and form, as that she cannot give
 away any manner of profit arising out of the
 lands, without the leave of her husband;
 and she cannot disagree unto the same estate
 during the marriage.
- T. 43 E. 3.
 T. 19 E. 3.
 3. 94.
 T. 9 E. 3.
 29.

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354. And it is commonly taken, that if a woman run away from her husband with another man in adultery, and be not reconciled again unto him with his good will and her agreement, * without the constraint of Holy Church, she shall lose her dower, notwithstanding that she remaineth not with the adulterer; but if she remain with her husband, after such her running away, with his agreement, and without constraint, she shall have dower. *Stat. Westminster 2. cap. 35.* : And if a woman be ravished, and remain with the ravisher against her will, she shall not lose her dower. But if she willingly run away from her husband, notwithstanding that she remain all her life time with the adulterer against her will, she shall lose her dower.

355. But if a man seized of two manors in fee, taketh a wife, and when the husband is dwelling at one manor, the wife go unto the other manor, and when she is there she liveth in adultery, it is said that by doing so, she shall not lose her dower; because it cannot be intended a running away from her husband, when the law cannot intend that she can dwell upon the manor of her husband, without the agreement of her husband; *tamen quere.* And it is to know, that a woman may delay herself of her dower, by the detaining of the charters which concern the inheritance whereof she demandeth dower from the heir, &c.

[155]

E. 8 E. 2.

153.

2 Inst. 436.

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M. 19 E. 356. And therefore, if a woman bring a writ of dower against the heir of her husband, *&c.* It is a good plea to say, that the woman doth detain from him certain charters, and shew what charters concerning his inheritance whereof she demandeth dower; *&c.* but know, that such charter, or charters, ought to concern the title which he hath by descent, *&c.* otherwise it is no plea.

357. And such cause is not sufficient for the heir to detain dower of more land than the charter doth concern, *&c.* And if in such case she do detain a deed which doth belong unto the heir by reason of a reversion which descended unto him, it is a good cause for the heir to detain her dower in the same land; but the detaining of charters concerning land of which the heir is not seised, is no cause for to detain her dower of the same land.

358. And therefore, if a woman bring a writ of dower against the feoffee of her husband, and feoffee vouch the heir of the husband to warranty, if the heir enter into the warranty and plead such matter, it is no plea, because he is no tenant of the land, and therefore the deed doth not belong unto him; and for the heir who cometh into court as tenant by receipt, such matter is no plea, because the deed doth belong unto another as well as unto him.

359. But if there be two coparceners of land, and after partition made betwixt them, their mother bringeth a writ of dower against one of them, it shall be a good plea for her to

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to plead a detainer of deed by the demandant, which deed concerneth the inheritance whereof she demandeth dower, notwithstanding that the deed doth concern as well the inheritance of her sister, as her own inheritance, &c. E. 4. E. 3. 11.

360. But if a man seised of lands in fee take a wife, and he hath issue a daughter and dieth, his wife young with child, the daughter entereth into the land, in such case, such detainer of evidences by the wife, as before is said, *mutatis mutandis*, shall be no cause for the daughter to detain her dower, and the reason is, because it may be that the wife is not with child of a son, &c. And know, that the detainer of a transcript of a fine from the heir by the wife, is not a sufficient cause to detain her dower. And it is to know, that no person shall justify the detaining of dower, but the heir; and then the same ought to be in manner and form, as before is said. M. 6 E. 3. 45. E. 1 E. 3. 12. M. 10 E. 3. 49. 112.

361. And therefore it is well shewed and declared in the Annotations in *NATURA BREVIIUM* upon the writ of dower, that the guardian in knights service cannot detain the dower of the wife for the detaining of charters concerning the inheritance of the heir. But the guardian in knights service may justify the detainer of dower, for detaining of the wardship of the body of the heir. And if a woman take away the infant, and deliver * him to another man, yet it shall be a good cause, for the guardian to detain her dower for the wrong done unto him, &c. T. 11 H. 3. 187. 1 Inst. 39. 2. M. 8 E. 3. 47. * [158]

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if she cannot deliver the infant to him, in as good plight as he was when he was taken away, viz. unmarried, if he were unmarried at the time of the taking away.

362. But if a woman, as his mother, doth bring up or nourish her child, because he always remained and dwelt with her husband, and with her from the time of the death of her husband; and another man claimeth to have the wardship of the infant, because (he saith) his father held of him by knights service, and taketh the child out of the custody or possession of the woman, this is no cause for the rightful guardian in knights service to detain her dower.

363. If an infant be dwelling with a stranger, and there brought up, at the time of the death of his father, and his mother taketh him from thence, and afterwards the stranger take him again out of her possession, so as she cannot deliver the infant unto the guardian in knights service, it is a good cause for to detain her dower, for the wrong which she did, viz. the cleigement, at what time she was liable to his action, as unto the wardship of the body; and such matter may the guardian in knights service plead, notwithstanding that he cometh into court by the vouchee of the infant * being in his ward, for the wardship of the infant by right doth not appertain unto any person but to him, if it be not by grant or agreement, &c.

364. And it is to know, that notwithstanding a woman will not go unto her husband

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band into another country where he dwelleth not when he is wounded, and notwithstanding that he dieth of the same wound, she will not bring an appeal of his death, yet she shall be endowed.

365. But *quare*, if the husband lie sick in his house, where he and his wife are both dwelling, and his wife will not come to him in his sickness, if she shall have dower; and notwithstanding that a woman being in a frenzy, and of unsound memory, kill her husband, or another man or woman, she shall not forfeit her dower, &c. 12 H. 3.
183.

366. And it is to know, that the husband by his act may prejudice the wife in her dower by his laches of entry, by his laches of suit, or by his laches of pleading, and by divers other acts as shall be said: Know, that when no possession was in the husband, either in deed or in law during the marriage; where the laches of entry of the husband shall prejudice the wife of dower, if not that it E. 1 H. 7. be in special cases; and therefore if a man 17. seised of some acre of land in fee, be disseised of the same acre, and taketh a wife and dieth before his entry, his wife shall not have dower.

367. And if a man dieth seised in fee, * [160] and a stranger doth abate in the same land, E. 21 E. 4. and after the abatement the heir marieth a 60. wife, and dieth before his entry, his wife shall not have dower of the same land.

368. And if a man enfeoff a stranger upon condition on the part of the feoffee, and the feoffor marieth a wife, and the condition

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is broken, and the feoffor dieth before any entry made by him, or by any other in his name, his wife shall not have dower of the same land.

369. And if *J. S.* seised in fee of one acre of land, exchange the same acre with *T. K.* for another acre in fee, and *J. S.* entreth and executeth the exchange, for his part, *viz.* for the acre which was put in exchange to him, and *T. K.* taketh a wife, and dieth before that he entreth by force of the exchange, his wife shall not have dower of the one acre, or of the other, &c. And the reason is, because the husband was not seised of that land, either in deed or in law, during the marriage betwixt them, &c.

370. And if a man hath judgment for to recover land, &c. and marrieth a wife, and dieth before entry or execution sued, his wife shall not have dower, &c. But if the husband be seised in deed, or in law, during the marriage, then his laches of entry shall not prejudice the wife of her dower.

• [161] • 371. And therefore, if there be lord and tenant, and the lord marrieth a wife, and the tenant dieth without heir, and a stranger abateth, and the lord dieth before his entry, his wife shall have dower of the tenancy.

372. And if land be leased for life, the remainder unto *J. S.* in fee, and *J. S.* marrieth a wife, and the lessee dieth, and a stranger entreth, and *J. S.* dieth before any entry made by him, &c. his wife shall have dower of the same land, &c. And if a man be
seised

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seised of a villain in gross in fee, and the lord of the villain hath issue a son, which son marieth a wife, and the father dieth, and the son dieth before any seisure of the villain, yet his wife shall be endowed of the villain, &c.

373. And if a rent be granted unto a man T. 11 H. in fee, and the grantee doth accept of the 4. 88. grant, and taketh a wife, and at the day of payment the tenant of the land doth tender the rent unto the husband, and he will not receive the same, but utterly refuseth the same, and dieth before any receipt of the rent by him, or by any other in his name, or for him, &c. and before any thing paid unto him in name of seisin of the rent, &c. yet the wife shall have dower of the rent, &c. But if in the same case, the husband had brought a writ of annuity against the grantor of the same rent, and had recovered in the same action, then the wife * shall not * [162] have dower thereof, &c.

374. And it is to know, that the husband may prejudice the wife of her dower, by leases &c. And therefore, if there be lord, mesne, and tenant, and the tenant doth cese, and the mesne taketh a wife and dieth, his wife shall not have dower of the tenancy; notwithstanding that her husband had cause of action for the tenancy, &c. And if a man seised in fee of one acre, lease the same acre unto a stranger for life, and after the lessor taketh a wife, the lessee doth commit waste, and dieth, his wife shall not have dower of this land.

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375. And if there be husband and wife, and the husband is seised of one acre of land by wrong title, and is impleaded of the same acre by him that hath right, who voucheth a stranger to warranty, who entreth into the warranty and loseth, and each of them hath judgment for to recover against the other, and the demandant entreth, &c. and the husband dieth before execution sued against the vouchee, his wife shall not have dower of this land; notwithstanding that the heir of the husband sue forth execution; and this land cometh in lieu of the land which the husband was seised of during the marriage betwixt him and his wife, &c.

376. And it is to know, that for laches of pleading, the husband shall not prejudice his wife of her dower; if not that it be in special cases. * 163] * Notwithstanding that the statute of *Westminster 2. cap. 4.* recite, *Quod si vir implacitatus de tenemento reddat tenementum petitum adversario suo de plano, post mortem viri sui, justitiar. adjudicent mulieri dotem, si per breve petat, &c.* that is but a recital of the common law; for the common law ought to be intended where the husband had right, and he who recovereth, no right; and so is the law at this day, if the husband lose by default, &c. And so was the common law before the making of that statute; so that that statute is but an affirmance of the common law in that point.

377. And therefore at the common law, before the making of that statute, if a man had been seised of land in fee by a rightful title,

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title, take a wife, and is disseised, and re-
 entreth upon his disseisor, and his disseisor
 arraign an affize against him, and he confess
 the disseisin, and the disseisor releaseth the da-
 mages, and hath judgment to recover, and
 entreth, and the husband dieth, his wife shall
 recover her dower against him who recovered
 in the affize by the common law; because
 that her husband had right, and he who re-
 covered no right.

378. And if a disseisor be of land who M. 15 E.
 taketh a wife, and the disseisee releaseth all 3. 30.
 his right unto the disseisor, and notwithstanding
 that, brings a writ of entry in nature of
 an affize against the disseisor, and recovereth
 by default, and the disseisor dieth, his wife
 may recover her * dower against the disseisee; * [164]
 because at this time her husband had right by
 the release, and the disseisee no right.

379. But if he who recovereth by reddi-
 tion or by default, had right, then it shall be
 otherwise. And therefore, if the heir of a
 disseisor of land be in by descent, upon whom
 the disseisee doth enter, and taketh a wife,
 against whom the heir of the disseisor doth
 recover by reddition, or by default in a writ
 of entry in the nature of an affize, and the
 husband die, in this case, his wife shall not
 recover her dower by writ; because he that
 recovered had right unto the possession, ac-
 cording unto the nature of his action; and
 the husband was not seised of other possession
 during the coverture, but of that possession
 which is destroyed and defeated by the reco-
 very, &c.

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H. 14 H. 4. 31. 380. But if a man seised of land in fee, take a wife, and is disseised, and the disseisor dieth seised, and his heir is in by descent, upon whom the disseisee doth enter, against whom the heir of the disseisor doth recover by reddition, or by default in a writ of entry in the nature of an assize, and the husband dieth, his wife shall recover her dower, &c. notwithstanding that he who recovered had right unto the possession, according to the nature of his action, &c. And the reason is, because the husband had an ancient seisin during the coverture before the writ brought, in which the recovery was; by force of which * [165] seisin, the * wife had title to have dower; H. 5 E. 3. and the ancient seisin is not defeated and destroyed by the recovery, &c.

H. 5 E. 3. 7. 381. And it is to know, if in a *præcipe* brought against the husband, he plead *misnomer*, which is found against him; by force of which the demandant doth recover, such recovery shall not oust the wife of her dower, if the demandant had not right, &c. And if in a *præcipe*, &c. against the husband, the husband plead jointenancy, &c. which is found against him, by force of which the demandant doth recover, this recovery shall not oust the wife of her dower, unless the demandant had right.

E. 12 E. 4. 140. 382. And if in a writ of entry *en le poß*, against the husband, he vouch himself to save the tail, and sheweth for cause, that his father gave the same land unto him in tail, &c. and that the reversion is descended unto him from his father, &c. and the demandant traverseth

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verfeth the gift, which is found with him, by reason whereof he doth recover, and the husband dieth, now if the husband had a release of all actions, or of all the right of a demandant to plead, and did not plead the same, his wife shall falsify this recovery in a writ of dower, &c.

383. And if tenant in tail of land hath issue, and dieth, and a stranger abateth and dieth seised, and his heir is in by descent, who taketh a wife, and the issue in tail bring an assize of * *Mortdancestor* against the husband, who traverseth the points of the writ which are found for the demandant, by force of which he doth recover and entreteth, and the husband dieth: In this case it hath been said, that the wife shall not recover dower of this land, before that this verdict be attained by the heir in a writ of attaint, &c. Yet it seemeth she shall falsify this recovery in a writ of dower, immediately after the death of her husband; forasmuch as her husband might have pleaded unto the action of the writ of the demandant, and she cannot have an attaint, &c. And if she shall stay until the heir hath defeated the verdict by attaint, then perhaps the heir will release, &c. or perhaps will not sue an attaint; and so the wife, in despite of her, shall lose her dower; which is not reasonable, when she was once intitled to have dower by the possession of her husband, during the coverture; which possession had never been avoided, if not by the laches or pleading of the husband; because he might have pleaded unto the action of the

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writ of the demandant, &c. *tamen quare*; because that the judgment is given upon the verdict; within which verdict is found matter contrary and repugnant to the matter which ought to be pleaded to the action of the writ, &c. but if the entry of the demandant had been lawful, &c. then the law is clear, and without question, that the wife shall * not falsify, &c. for then the demandant had been remitted by his entry, &c.

* [167]

384. If a disseisor be of one acre of land, and the disseisor dieth seised, and his heir enter and taketh a wife, and the disseisee doth recover the land against the husband by default, in a writ of entry *ad terminum, qui præterit*, and the husband die, his wife shall falsify this recovery in a writ of dower; *causa patet.*

385. And it is to know, that a demandant in a writ of dower shall not falsify a recovery had against her husband by default, for laches of her husband in not pleading a plea which goeth merely in abatement of the writ, if not that it be in special cases. And therefore to say that her husband might have pleaded *misnomer*, &c. or jointenancy, &c. are not causes to falsify a recovery, &c.

386. But if she shew matter proving that the demandant had not right nor cause of action, if not jointly with a stranger, the which stranger by his deed of release which she sheweth forth, hath released all his right unto her husband (then tenant of the land) before the action brought by the demandant, &c. this is good matter to falsify the recovery
for

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for one moiety of the land recovered, &c.
So shall it be of all such like cases, &c.

387. And it is to know, that if the husband commit treason, murder, or felony, for which he is attainted, the same shall oust the wife of her dower, &c. * But if after the attainder, the husband purchase a charter of pardon, now, of all such estates of inheritance whereof her husband is seised after the purchase of his pardon, &c. which inheritance the issue which by possibility he might have by his wife, by possibility might inherit by the common law, &c. she shall have dower, if it be not of such inheritances before spoken of, in the chapter of DOWER, and in other special cases. For notwithstanding that she was his wife at the time of the attainder, yet the issue which the husband might have had by her after the purchase of his charter of pardon, is inheritable, &c.

1 Inst. 31.
2. cont.
13 E. 1.
Dow. 172.
M. 15 E. 3.
Dow. 68.
* [168]
1 E. 6. c.
12. §. 17.

388. But if the husband be outlawed in trespass, &c. the same shall not oust the wife of her dower, for by such outlawry he shall not forfeit either freehold or inheritance, &c.

M. 3 E. 3.
70.

389. If there be lord and tenant, and the tenant take a wife, and afterward cesseth, upon which the lord bringeth a *Cessavit*, and doth recover, and entereth into the tenancy, and the tenant dieth. It seemeth clear, that the wife shall have dower, for no laches or default can be deemed in the wife as to the cessor. But some say, that the wife shall not have dower in this case, because that the cessor doth not lie in any act

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- done by the husband; but it is his not doing, and because it is given by the statute of *Gloucester, cap. 4.* And if he die, until it be recovered * by judgment, let him be barred of the remnant.
- * [169]

390. But if there be lord and tenant, and the tenant leaseth the tenancy unto a stranger for years, and the stranger cesseth, and the lord recovereth in a *Cessavit* and entreth, the lessee, shall lose his term; *causa patet, &c.* If there be lord and tenant, and the tenant taketh a wife, and alieneth the tenancy in mortmain, or setteth a cross upon it, and the lord entreth, and the tenant dieth, his wife shall have dower of the tenancy, *&c.*

See Stat.
9 G. 2.
c. 36.

E. 8 E. 3.
20.

391. If the husband of his own will go into another country which is inhabited with the King's enemies, and there willingly dwelleth with them, and doth aid and assist them against our lord the King, his wife shall lose her dower, *&c.*

H. 42 E. 3.
1.

392. If *W.* doth enfeoff *K.* upon condition, that if *W.* pay unto *K.* ten pounds at a day certain, that the feoffment shall be void; and if not, that it shall be of force; and *K.* taketh a wife, and at the day appointed doth not pay the money; and afterwards *W.* dieth, and by agreement betwixt the heir of *W.* and *K.* the heir of *W.* payeth the money unto *K.* by which the heir of *W.* hath the land, and afterwards *K.* dieth, his wife shall have dower notwithstanding this acceptance of the money made by the husband; *causa patet.* See divers cases concerning

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ing dower in the chapter of *DREDS*; *mutatis*
 * *mutandis*. See other cases concerning * [170]
 dower in the first book of Mr. *Littleton*.
 And upon the writs of dower in *Natura*
Brevium, with the additions and annotati-
 ons, &c.

393. And because a woman who is en-
 titled to have dower by the common law,
 ought to have an assignment thereof made
 unto her; therefore something shall be said,
 shewing, what persons may assign dower, and
 then of what things assignment of dower may
 be made, and then where the assignment of
 dower shall be good, notwithstanding that it
 be not made by metes and bounds, &c.

394. And it is to know, that assignment
 of dower made by a disseisor is good, and
 shall not be avoided, if it be not made by
 covin or fraud, as shall after be said, if the
 woman have right to have the thing in
 dower. 1 Inst. 35.

395. But if a disseisor, abator, or intru-
 der, be of land by covin of the woman who
 hath right to have dower of the same land,
 and such disseisor, abator, or intruder endow
 the same woman, the disseisee who hath right
 unto the land, may avoid and defeat such
 dower by his entry into the land, &c. H. 44 E. 3.

396. And if *J. S.* be tenant of land, and
 to which a woman hath right to have dower,
 and he is disseised of the same land by the
 woman and a stranger, or by the woman
 alone, and afterwards she is endowed of the
 same land by one who is in * the land by *
 her, and the other joint disseisor, or by one
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of them; such endowment may be avoided, by the entry of the disseisee, because she shall not take advantage of the wrong unto which she herself was party, &c.

397. And therefore, if the issue in tail doth disseise the discontinuee of his father of the land entailed, and thereof doth enfeof his father, and his father dieth and the land descendeth unto him, yet he shall be remitted; *causa patet*. And if there be two or three, or more jointenants of land, of which land a woman hath right to have dower, and one of the jointenants doth assign dower unto the woman according to her right, it is a good assignment, and shall bind his companions; but if he had assigned a rent issuing out of the same land unto the woman for her dower, his other companions shall not be distrained for the same rent, because he was not compellable by law to assign unto her a rent for her dower.

398. And if an assignment of rent be made unto a woman in allowance of dower which she ought to have of the same land by a disseisor, abator, or intruder, the disseisee, or he who hath right unto the land shall not be bounden by such assignment, notwithstanding that it be without any covenant of the woman, &c.

339. And if a man seised of land in the right of his wife, or jointly with his wife, assign the third part of the same land to the wife for her dower, it is a good assignment, and the wife shall be bounden thereby, notwithstanding that the husband dieth leaving

E. 7 H. 6.
3. 4.
Dower 2.
1 Inst. 34.
a.

7 Aff. 41.

B. 10 E. 2.
Dow. 189.

E. 10 E. 2.
4. 139.

* [172]

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leaving the wife, for when the husband alone out of the court doth a thing, which he and his wife by law are driven to do, it shall be intended the act of the one and the other, if not that it be in special cases, &c.

400. And if a man seised of two acres of land in fee, taketh a wife, and doth enfeof a stranger of one of the acres with warranty, and dieth, and both acres are in one county, and the heir doth endow his mother of his acre in allowance of all her dower in both acres, it is a good assignment : For if the feofor had been impleaded by the woman in a writ of dower, he might have vouched the heir, and the demandant shall recover M. 3 H. 6. against the heir conditionally, and so, &c. 17.

401. And if the heir leaseth for life unto a stranger, parcel of the land which he hath by descent from his father, and doth assign unto his mother parcel of the land which he hath in possession in allowance of all her dower, as well for the land leased as for the land which remaineth in his possession, the assignment is good ; and yet if the woman implead the lessee by a writ of dower, and he vouch his lessor, the wife shall not have judgment to recover against * the heir be- * [173] cause he is not bound unto the warranty by his father, who was husband to the woman.

Quare, If in such case, the lessee vouch the heir generally, and the heir enter generally into the warranty, then it seemeth that judgment shall be given for the demandant against the vouchee conditionally, &c. Dyer 256.

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402. And if there be three or four several
 1 Inst. 535. feoffees of land of which a woman hath right
 a. to have dower, and one of them assign parcel of his land unto the woman for her dower, in allowance of all the freehold which belongeth unto her husband, and she agree unto such assignment; it is said, that this assignment shall discharge the other feoffees against the wife for any dower; and so it seemeth the law is, &c. But some have said the contrary, for they say, that they cannot plead this matter against the woman in several writs of dower brought by her against them; *tamen quære*. And the feoffee who made assignment cannot come into court and plead this matter in actions brought against the other feoffees, because he is a stranger unto those actions, and there is not
 3 E. 3. any means to bring him into court, &c.
 Dow. 76.

403. And assignment of dower by the
 1 Inst. 35. guardian in knights service is good, if the woman hath right to have dower of the land, and if the woman hath * not right to have dower thereof, yet it shall stand good until it be avoided.

* [174]

404. But the assignment of dower by a guardian and socage is not good, as it seemeth, because a writ of dower doth not lie against him. The same law is of tenant by elegit, tenant by statute merchant, tenant by statute staple, and by lessee for years, &c. But an assignment of dower made by him who hath the freehold is good, if it be of such a thing as may be assigned, and of which the woman hath right to have dower. And notwithstanding

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standing that the woman hath not right to E. 7 R. 2.
have dower thereof, yet it shall stand good, Receipt
until it be defeated and avoided, &c. 95.

405. Now is to shew of what things an
assignment of dower may be made. And as
to that, know, that parcel of the thing to
which the woman hath right of dower may
be assigned unto her, if not that it be in
special cases. And therefore if a woman
hath right to have dower of lands, tenements,
rents, commons, and such like, parcel of the
same thing may be assigned unto her in the
name of dower, and it is not necessary or
requisite that the third part of the thing unto
which she hath right of dower be assigned 7 H. 2.
unto her; for if the fourth part, the fifth Receipt
part, or the moiety be assigned unto her in 95.
the name of dower for all the freehold which H. 9 H. 3-
her husband had, and she agree thereunto, it Dow. 196.
is sufficient, and it is a good assignment, &c.

* 406. And it is to know, that the heir * [175]
is not compellable to assign unto his mother 1 Inst. 131.
for her dower the capital messuage which was cont.
his father's, or any part thereof, notwith-
standing that his mother be dowable of the
same messuage. But if the heir do assign
unto her the same in allowance of other land,
and she agree thereunto, the assignment is
good. And the heir may assign unto her
other lands and tenements whereof she is
dowable, in allowance of the same messuage,
and if there be not any other lands or tene-
ments whereof she is dowable besides the said
capital messuage, and the heir assign unto
her a chamber in the same messuage in the
name

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name of dower, in allowance of the same messuage, and she agree thereunto, it is a good assignment. But it seemeth she is not compellable to take the same, because the messuage is as it were an intire thing, &c. And it shall be but trouble and vexation unto a woman, to have a chamber within the house of another man, and if she will not agree unto the same, then the heir may assign unto her a rent issuing out of the same messuage in the name of her dower, &c. And such assignment is good without deed. And the same law is of assignment of common of estovers, or of common of pasture, &c. or

H. 33 H. 6. of any other thing whereof a woman is dowable.

1 Inst. 534. 407. But lands or tenements, whereof a woman is not dowable, cannot be * assigned
b. * [176] unto her in the name of her dower in allowance of other lands or tenements whereof she is dowable, &c. *mutatis mutandis*, &c.

408. And it is said, that all the land which the husband had in possession during the coverture, cannot be assigned unto her in the name of dower, notwithstanding that the husband were seised of such an estate during the marriage, that the issue which by possibility they might have betwixt them, by possibility might inherit the same land, by the common law, &c.

409. And it is to know, that lands in *Wales* may be assigned unto a woman for

E. 7 E. 3. her dower in allowance of all the freehold of her husband, &c. And by this assignment

Dow. 103. she shall be excluded to demand dower of any other

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other lands which her husband had within any place in *England*, &c.

410. If a woman bring a writ of dower, &c. and hath judgment for to recover, and between the judgment and execution the tenant assign unto her a rent by word issuing out of the same land, whereof she demandeth dower in allowance of her dower for the same land, to which assignment she doth agree, it shall be a good bar in a *scire facias* brought by the woman to have execution of the land recovered, &c. But in the same case, if the assignment had been by word of other land, whereof she is not dowable, which land is not comprised within her * demand, it is said, * [177] that such assignment shall not be a bar in a *scire facias* brought by the same woman to have execution of the judgment given in the writ of dower, &c. because it is not pursuing unto the judgment, and because it is by word, &c. and this seemeth to be good law, &c.

E. 31 E. 3.
Sci. fa. 99.

411. It is a common speech, that the dower of a woman ought to be assigned unto her by metes and bounds; if not that it be in the case of tenants in common, &c. which is put in the Chapter of DOWER in the first book of Mr. *Littleton*. And yet in divers cases, assignment of dower may be made without metes and bounds.

r. Inf. 32.
b.
Lit. §. 44.

412. And therefore, if there be two men coparceners of lands in fee-simple by the custom of gavelkind, and one of them taketh a wife, and hath issue, and dieth before partition, &c. and his issue entreth and endoweth

eth

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eth his mother generally of the third part of the moiety, and she agree thereunto, it is a good endowment; and yet it is not assigned by metes and bounds; and by such assignment
 8 E. 2. she shall hold in common with the other co-
 Entre 75. parceners. And in the same case by one mesne, the issue ought to have assigned unto the woman her dower in certain, viz. by metes and bounds; for if she had made partition with his uncle before the assignment, it might have been by metes and bounds: But notwithstanding it is good, it is good in the
 * [178] manner * and form as it is made, as before
 M. 16 E. it is said:

3. 91. 413. And it hath been holden, if the heir enter, &c. and assign unto his mother the third part throughout the whole land which was his father's, to occupy the same in common, of which land she was dowable, and she by force thereof enter and occupy the same with him, it is a good endowment; *tamen* it seemeth at this day the law is otherwise; *ideo quære, &c.*

414. But if a woman bring a writ of dower of land, and recover her dower, and sueth forth a writ unto the sheriff to put her in execution, &c. the sheriff ought to put her in execution of the third part by metes and bounds, if he may so do, &c.

33 H. 3. 415. If a woman be endowed of the third
 Dow. 203. part of the profit of a mill, that is not certain, and yet it is good; and she shall grind there toll-free. The same law is of a bailiwick; *mutatis mutandis, &c.*

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416. And it is to know, that if a man be
 : feised of three shillings of rent-charge in fee,
 : and taketh a wife, and hath issue, and dieth, ¹ Inst. 34.
 : the wife cannot distrain for the third part of ^b.
 : this rent before assignment made; and yet it
 : certainly appeareth what rent she is to have,
 &c. And notwithstanding that she bring a
 writ of dower of the same rent, and recover-
 : eth, yet she can distrain for no rent behind
 : after the judgment, before execution sued,
 : notwithstanding that the certainty * thereof * [179]
 : doth appear: And how and in what manner E. 40 E.
 : the sheriff shall put her in seisin thereof, see 3. 22.
 : in the Chapter of FEOFFMENTS; *mutatis*
 : *mutandis*, &c.

417. And if there be lord and a woman
 : tenant by fealty and three shillings rent, and
 : they intermarry, and the lord dieth, the wife
 : shall have twelve-pence of the rent for her
 : dower of the seignory by way of retainer,
 &c. without any manner of assignment made
 : by any person, &c.

418. And it is to know, that sometimes a
 : woman shall be new endowed. And as to
 : that, know, that when the lands, tenements,
 : or, &c. are lawfully devested out of her pos-
 : session, and in despite of her, she shall be
 : new endowed of the third part of that which
 : doth remain in which the seisin whereof she
 : is dowable, is not defeated or avoided, if not
 : that it be in special cases, &c.

419. And therefore, if a man be feised
 : of two acres of land in fee by rightful title,
 : and is feised of another acre of land by dis-
 : seisin, and taketh a wife, and dieth, and his
 : heir

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heir entreth and assigneth the acre which his ancestor had by disseisin unto the wife in name of dower, in allowance of all the freehold which her husband had, &c. and the disseisee doth enter into the acre assigned unto her, and put her out, she shall be new endowed of the third part of the two acres which her husband had by rightful title, in such manner as if the other acre had never

* [180] been * in the possession of her husband, &c.

420. And if tenant in tail be of land; and thereof doth make a discontinuance in fee; and the discontinuance taketh a wife and hath issue, and dieth, and the discontinuance is not seised of any other thing during the coverture, of which his wife is dowable, and his issue entreth, against whom his mother bringeth a writ of dower, and doth recover, and hath execution of the third part by metes and bounds, and the issue in tail bringeth a *formoden* against the tenant in dower, and she voucheth the issue of the discontinuance, who entreth into the warranty and loseth, and the demandant hath execution. Now, the tenant in dower shall be new endowed of the third part of the two parts which remain, &c. notwithstanding that his issue hath enfeoffed a stranger of part thereof or of all. For notwithstanding that the possession which her husband had (whereof she is dowable) be defeasible, yet she shall have dower thereof until it be defeated, &c.

43 Aff. pl.
32.

421. If a man seised of two acres of land in one county, take a wife, and enfeoffed a stranger of one of the acres with warranty, and

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and hath issue and dieth, and his issue entreteth into the other acre, and the wife brings a writ of dower against the feoffee, and he vouch the issue, &c. who loseth by default, and the wife hath judgment conditional, viz. To recover against the vouchee, if he, &c. and the demandant sueth execution accordingly, and * she is put in execution of land, * [181] which the vouchee hath by descent in the same county where the dower is brought, as heir to her husband, of which land she is dowable, and tenant holdeth in pence, and the vouchee is restored to the land which the wife recovered by a writ of deceit: In this M. 8 E. 2. case, the wife shall have a *scire facias* against Voucher the feoffee who was tenant in the writ of 157. dower; and notwithstanding that the tenant M. 3 E. 3. hath enfeoffed a stranger of the same land be- 50. fore the *scire facias* brought against him, yet his feoffee shall be bounden by the judgment given in the writ of dower; because that the judgment in the writ of dower was given of the land conditionally, &c.

422. And if a man seised of land in fee, T. 4 E. 3; taketh a wife, and hath issue, and dieth, and 36. the wife take a second husband, and the issue H. 32 E. entreteth into the land as heir unto his father, 1. 121. and doth assign the third part thereof by metes and bounds to his mother by the agreement of her husband for her dower, in allowance of all the freehold which his father her late husband was seised of, and her husband which now is doth discontinue the same land in fee, and dieth, the wife may have a *cui in vita* against the discontinuee of this land: And it bath

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H. 33 E. hath been holden, that she may refuse it, and
 1. be new endowed according unto the value of
 Dow. 177. the whole land, which was in the possession
 2 Inst. 309. of her husband during the coverture, of which
 possession she was dowable, &c. *tamen quære* ;
 * [182] because the same woman * with her husband
 might have compelled the issue to have the
 same woman by a writ of dower. And if
 they have done so, she shall not be new en-
 dowed. But there appeareth a difference in
 this case, where she is endowed by writ of
 dower; and where by the assignment of the
 heir, or by another person, without writ of
 dower, &c.

423. And it is to know, that if the free-
 hold whereof she is dowable, be in the pos-
 session of divers persons by several titles; the
 wife in a writ of dower brought against one
 of them, shall recover but the third part of
 the freehold which is in his possession: So
 that a man or a woman who hath possession
 of parcel of the freehold (of which the wo-
 man is dowable) shall not be charged accord-
 ing to the possession of the whole freehold of
 which the woman is dowable, if he or she
 will not.

424. Now is to shew, unto what person
 the tenant in dower shall be attendant, and
 for what services. And as unto that, know,
 that tenant in dower for the most part shall
 be attendant unto him in the reversion, &c.
 And also she may be attendant unto guar-
 dian in knights service, and unto his exe-
 cutors during the time the heir of her hus-
 band is in ward, &c. And she shall be at-
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tendant unto them, &c. by the rate and portion of the rent as the land doth amount unto which she holdeth in dower, if not that it be in special cases, &c.

* 425. And therefore, if there be lord, * [183] mesne, and tenant, by knights service, and E. 33 E. 3. three shillings rent, and the tenant taketh a Dow. 138. wife, and hath issue and dieth, his issue being within age, and the mesne seizes the ward of the body and of the land, and entreth into the tenancy, and doth assign the third part of the tenancy by metes and bounds unto the woman, mother of the ward for her dower, she shall be attendant unto the guardian in knights service by twelve-pence rent; and if the guardian die during the nonage of the heir, then she shall be attendant unto the executors of the guardian by twelve-pence rent, until the heir shall come of full age; and when the heir cometh to his full age, she shall be attendant unto him by twelve-pence, &c.

426. And if there be lord and tenant by fealty and twelve-pence, and the tenant taketh a wife, and hath issue, and is disseised of the tenancy, and dieth, and the disseisor doth endow the wife, now she shall be attendant unto the disseisor by four-pence. But if 20. the issue brings a writ of *entre sur disseisin en le quibus* against the tenant in dower of the land, which is holden in dower; and she shew forth the special matter and saith, that she claimeth nothing in the land, but in right of her dower, and that she is ready to be attendant to whom the court shall award, &c. In this case the court ought to award, that

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* [184] that she shall retain the land * demanded for her dower, and that she shall be attendant unto the heir who is the demandant, and by this judgment the reversion is in the demandant, and not before; and it seemeth the demandant hath not other remedy in this case to come to the reversion of the land which the wife holdeth in dower, &c. For if he had entred upon the tenant in dower, &c. she might have had an assise, and recovered; because she had right to have dower, &c. and she cannot at the time of the assignement made demand dower thereof of any person, if not against the disseisor who made the assignement, &c. and the assignment was not made by covin, &c. *tamen quære*, if he had any other remedy to come to the reversion, &c. But now the wife shall be attendant unto the heir by force of the judgment, &c. and not unto the disseisor, &c.

427. And in the same case, the heir cannot enter upon the disseisor, and put him out of the other two parts of the tenancy, &c. And if he grant the reversion of the tenant in dower unto a stranger, and the tenant in dower attorn, she shall be attendant unto the grantee; *causa patet*.

H. 32 E. 3. Dow. 131. 428. If there be lord, mesne, and tenant, and the tenant holdeth of the mesne by three pence, and the mesne holdeth over by twenty-pence, and the tenant taketh a wife, and the mesne doth release unto the tenant all the right which he * hath in the tenancy, &c. and the tenant dieth, and his wife is endowed by the heir of the third part of the tenancy, she shall be

* [185]

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be attendant unto him by one peny, and not by the third part of the twenty-pence; because, that she shall be endowed of the best possession which her husband had during the coverture, &c.

429. Lord and tenant are by fealty and twelve-pence, the tenant taketh a wife, and the lord purchaseth the tenancy in fee, and the estate is executed in him, and the tenant dieth, and his wife is endowed of the third part of the tenancy, now she shall not be attendant for any rent, because that by the purchase of the tenancy in fee, by the lord, the seignory was determined; and a thing which is determined cannot be revived. M. 21 E. 3. 130.

430. Lord, mesne, and tenant, are by fealty and twelve-pence, the tenant taketh a wife and dieth, and his wife is endowed of the third part of the tenancy by the heir of the husband, she shall be attendant unto him for four-pence: But if in the same case the lord paramount release unto the heir all his right in the tenancy, by this release the mesnalty is determined; and therefore the wife shall not be attendant unto the heir for any rent after the release, &c. because she was attendant unto him but in respect of his charge over, &c. H. 3 E. 3. 9.

431. But if lord and tenant be by fealty and twelve pence, and the tenant * give the tenancy unto J. S. in tail, to hold of him * [186] and his heirs by fealty and twenty shillings rent, and J. S. take a wife, and dieth without issue, and the donor entreth and endoweth the wife of the donee, &c. she shall be attendant

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34 Aff. pl. 15. attendant unto him for six shillings and eight pence; for if the husband had been living, he should hold all the land by twenty shillings, &c. and she is endowed of the possession of her husband, &c. and she in this case shall not be attendant unto the dower in respect of an over-charge: But she shall be attendant unto him by reason of a special reservation made by the donor, &c. And when she had the third part of the land, out of which the reservation was made, it is reason that she should be attendant for the third part of the rent which was reserved, &c. And if in the same case the lord release all his right in the tenancy, unto the tenant who was donor, yet she shall be attendant unto the donor for six shillings and eight-pence, &c.

432. If there be lord, mesne, and tenant, and the tenant holdeth of the mesne by fealty and three shillings rent, and the mesne taketh a wife, and the tenant bringeth a writ of mesne against the mesne, and forejudge him, and the mesne dieth, the wife of the mesne shall have dower of the rent by which the tenant held, and shall not be attendant unto the tenant; *causa patet*.

* [187] * 433. If lord and tenant are by fealty and twelve-pence, and the tenant giveth the tenancy in tail, reserving twelve-pence, and the donee taketh a wife, and hath issue, and discontinueth the land in tail in fee, and dieth, and his wife bringeth a writ of dower against the discontinuee, and recovereth, and hath execution, she shall not be attendant for any rent unto the discontinuee, for she is not charge-

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chargeable in the same course her husband was, for the donor cannot avow upon her for the rent reserved, &c. but he may avow for the same upon the issue in tail notwithstanding the discontinuance; and yet the wife shall not be attendant unto the issue in tail, until he hath recontinued the estate tail, &c. *tamen quere.*

434. Lord and tenant are by fealty and a horse, price forty shillings, and the tenant taketh a wife and dieth, and his heir entrench into the tenancy, and endoweth the wife of the third part thereof, she shall be attendant unto the heir for thirteen shillings and fourpence. But if the tenant had been by fealty and a horse to be rendred yearly, &c. without limiting and making mention of what value the horse should be, &c. in that case the wife shall be attendant unto the heir in rendring unto him every third year a horse, &c. The same law is of other things which are entire, *mutatis mutandis*, if not that it be in special cases.

* 435. And as to dower by the custom, * [188] sufficient thereof hath been shewed by Mr. *Littleton* in his Chapter of DOWER, and in Lit. §. 37. NATURA BREVIVM, with the additions upon the Writs of Dower. But it is to know, if the custom be that a woman shall have for her dower the moiety of lands and tenements, which were her husband's holden in socage within such a precinct, &c. if the husband have a bailiwick, &c. or a fair, &c. in fee, during the coverture within the same precinct, the wife shall not have dower; be-
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cause

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11 E. 3. cause it is no tenement, &c. And a custom Dower 85. shall be taken strictly.

436. But if the husband hath a bailiwick, &c. or fair, &c. as appendant unto his manor within the same precinct, of which manor the husband was seised in fee during the coverture, and held the same in socage, now if the wife be endowed of the moiety of the manor by the custom, she shall have the profit of the moiety of the bailiwick, &c. or of the fair as appendant unto the moiety of the manor; but *quere*, if the bailiwick, or fair be disappendant in fee from the manor after the death of the husband, and before the endowment, whether she shall then have the moiety of the profit of the bailiwick or fair, &c. But it seemeth she shall have the same, because she shall be endowed of the best possession which her husband had during the coverture, or marriage, &c.

* [189] * 437. Of dower. *ad osium ecclesiarum*, 3
Litt. §. 39. good declaration hath been made by Mr.
1 Inst. 34. Littleton in his first book, in the chapter of
2. DOWER, and in NATURA BREVIVM, with the additions; and it is said that such endowment is good without deed, as well of lands lying in another county, as of lands lying in the county where the marriage is solemnized, because such endowment ought to be made after the contract made at the church door, if it be the custom so to do, for then they are husband and wife, and the husband cannot make a deed unto his wife, nor cannot make livery of seisin unto his wife to make her to be in the land by the same

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same husband. And because it is not requisite that the lands be with the view, &c.

438. If an infant at the age of eight years, 1 Inst. 34. endow his mother *ad ostium ecclesie* without a deed, such endowment is void, notwithstanding that he assent and agree unto the marriage, after his age of fourteen years; for a void thing cannot be made good. For notwithstanding that the marriage was good and effectual until disagreement, yet such endowment made by him, at such age, whereby his inheritance shall be bounden, is not good, &c.

439. And such endowment made *de capite* M. 4 H. 3. *tali baronia, tenet de rege in capite*; or, *de Dow. 180. capitali mesuagio feodi militis*, is not good. T. 9 H. 3. And it hath been holden, that * if a man Dow. 189. assign unto his wife when he espouses her, * [190] at the church door, &c. the moiety of all his lands and tenements which shall come unto him in fee, during the coverture, and afterwards during the coverture, he purchaseth lands or tenements in fee, and dieth. That the wife shall have the moiety of those lands by force of the assignment, &c. *tamen quere.*

440. The same law is, if a man endow H. 14 H. his wife, *ad ostium ecclesie*, of such lands 3. which his mother holdeth in dower, the re- Dow. 189. version to him in fee, upon condition, that if his mother die during the marriage betwixt them, that then his wife shall have all the lands for her dower, and after his mother dieth during the marriage betwixt them, &c.

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Litt. §. 40. 441. And as unto dower *ex assensu patris*, it hath been spoken of by Mr. Littleton in his first book of the chapter of DOWER, and in NATURA BREVIVM, with the additions upon the writs of DOWER. And it is to know, that so, and in the same manner as there is dower *ex assensu patris*, in the same manner and form there is dower *ex assensu matris*; *mutatis mutandis*.

E. 8 H. 3. Dow. 103. M. 20 E. 3. Dow. 134. M. 40 E. 3. 442. But there is no dower *ex assensu fratris nec consanguinei*; and the wife ought

1 Inst. 35. to have a deed of the father or mother, proving his assent and consent, for his freehold shall be bound thereby, and livery of seisin shall not be made thereof; and the father may well make such a deed unto his

• [191] son's wife, * &c. And yet in ancient books, such assent and consent hath been tried by proofs, but the law is contrary at this day. And such endowment ought to be made immediately after affiance made betwixt them at the church door, or in the church if the marriages are used to be in the church, &c.

443. And yet it hath been holden in ancient Books, that where the son is heir apparent unto his father, (and so he ought to be) for such endowment made unto the wife of the second son is nothing worth, if he marrieth against his father's will; and afterwards within eight weeks after the marriage, the same son endow his wife, with the assent of his father, of the lands and tenements of the father, &c. It was holden that the same was a good endowment, &c.

2 H. 3. Dow. 199.

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444. And it is to know, that where the endowment *ex assensu patris, vel matris*, is good and sufficient in law; the wife of the son immediately after the death of her husband, in the life of the husband's father may enter into the same lands so assigned unto her in dower, &c.

445. And know, that if there be father : Inft. 35: and son, and the father is seised of land in a. fee, and leaseth the same land unto a stranger T. 6 E. 3. for life, and afterwards the son taketh a 34. wife, and endoweth her, *ex assensu patris*, of the reversion of the same land, and after the lessee dieth, and the father entreth into the land seised, and the * son dieth; the * [192] son's wife shall not have dower by force of this assignment, because that at the time of the assignment and assent, the wife was not dowerable of the reversion by the common law, notwithstanding that the reversion had been in the possession of her husband; and notwithstanding that the freehold and the fee are in the father of the husband *simul & semel* during the life of her husband; this matter shall not help the wife, for the title of the wife by force of such endowment did not begin after such endowment and assent of the father, &c. nor before such endowment, and such assent but took all its effect only at the same time.

446. The same law is, if the son endow his wife with the assent of the father, of lands of the father which he held jointly in fee with a stranger at the time of his assent, &c. So shall it be if such endowment be

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made of lands or tenements which the father holdeth for the term of his life, and the time of such endowment.

447. But if the father had been seised in tail of such lands, whereof such endowment is made at the time of his assent, &c. he shall be bounden thereby, during his life: But the issue in tail shall not be bounden thereby, nor a woman who hath title to have dower of the same land, before the assent, &c. As the father's wife which he had at the time of the assent, nor any stranger who have ancients title * to the same land, &c. shall be bounden by such endowment or assent, &c.

* [193]

T. 8 H. 3.

Dow. 199.

E. 3 R. 2.

Dow. 126.

448. And it hath been holden, if there be father and son, and the father is seised of land in fee with his wife, in the right of his wife, and the son endoweth his wife of the same land with the assent of the father, and the son dieth leaving his father, that the son's wife shall not have dower of this land against the father, yet the father may make feoffment of the same land, during the coverture between him and his wife, and it shall be good against him; and it hath been said, that it is because that in such case the husband doth presently dismiss himself of the possession; but in the other case he remaineth seised of the same land during the coverture, and in the right of his wife, and when this matter doth appear unto the court, the court who is a third person, shall bar the son's wife of her dower, because otherwise the court should do wrong unto the wife of the

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the father; *tamen quære*, for that the father cannot plead such matter; but if it be in an action in which receipt lieth, if the wife be received upon the default of her husband, she may plead this matter, &c. yet notwithstanding that she is received, it seemeth, that upon the matter of law, the son's wife shall * have the dower which was assigned * [194] unto her by her husband; with the assent of his father, &c.

449. For if a man be seised of land in fee, in the right of his wife, and he and his wife grant a rent-charge out of the same land unto a stranger in fee, and the grantee is seised thereof, and afterwards he distraineth for the rent, and rescous is made by the grantor, and he bring an assise of the same rent, &c. and the wife of the grantor be received, notwithstanding that she hath nothing in the rent, &c. upon the default of her husband, she plead the special matter, yet notwithstanding the plaintiff shall have judgment to recover, &c. And yet in the same case, the husband continueth possession in the land, out of which the rent was issuing, in the right of his wife, &c. But notwithstanding that, the grant is good, at the least during the coverture betwixt the husband and his wife, &c.

450. Dowment of the most fair part is in Lit. §. 48. such manner and form as Mr. *Littleton* hath shewed in his first book in the Chapter of DOWER. And it is to know, that if in such E. 14 H. case the lands which the woman hath as guardian in socage be not of value to make such

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- endowment, or if a rent-charge be issuing out of the same land, which rent had his beginning before the woman had title to have dower,
- * [195] *Et c.* and by reason * of which rent, or, *Et c.*
- Finch 461. the lands which she hath as guardian in socage, be not of sufficient value to make such endowment, then the woman by way of replication may shew this matter against the guardian by knights service, *Et c.* And if she do so, and the guardian by knights service cannot deny it, *Et c.* or traverseth the same, which by verdict is found for the woman, then the woman shall recover so much of the lands holden in knights service, as shall amount with the lands holden in socage, unto the value of the third part of the lands holden in knights service, and in socage, if the case so require, *Et c.*
- E. 45 E. 3. 451. But if all the lands which the husband had were holden in socage, *Et c.* and his wife hath them as guardian in socage, she shall be allowed of the third part of the profits upon her account, in allowance of her dower in the mean time: But in such case, she shall not endow herself of the third part of the lands or tenements, to hold as her freehold, *Et c.*
- M. 22 E. 4. 16. 452. And if in the same case the woman guardian in socage bring a writ of dower against the heir, it is no plea for the heir to say, that she is guardian in socage, and may endow herself, *Et c.*
- 1 Inst. 39. 453. And if a woman guardian in socage bring a writ of dower against the feoffee of the husband with warranty, * the feoffee cannot shew the special matter, and pray that the court would award, that she may endow herself
- M. 21 E. 3. 28. * [196]
- M. 25 E. 3. 5.

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herself of the fairest part, &c. because that the feoffee may vouch the heir: But the guardian in knights service may so do, &c.

454. And it is no good plea for the guardian in knights service to say, that the woman who is demandant in the writ of dower, was seised of certain lands and tenements as guardian in socage; and pray the court, that she may endow herself of the most fair part thereof, &c. *causa patet*. But *quære*, if he say that the woman was seised of lands and tenements, &c. as guardian in socage at the day of the purchase of the writ, it seemeth the same is a good plea, if the lands and tenements be not devested out of her possession by rightful title; and if it were so, yet the plea is good until this matter be shewed by the woman by way of replication, &c.

455. If a woman guardian in deed in knights service of lands and tenements which were her husband's doth bring a writ of dower against another guardian in knights service, of lands and tenements which were her husband's, it is no plea for her to shew the special matter, and pray that it be awarded by the court that she may endow * herself of the most fair part, &c. because that she being guardian in knights service, took the issues, profits and revenues of her same lands unto her own use, &c. * [197]

TENANT by the CURTESY.

Inst. 29.

456.

MR. *Littleton* in his first book in the Chapter of TENANT by the CURTESY, hath well declared of Tenant by the Curtesy, and hath also put a good maxim in law concerning Tenant by the Curtesy, in his Chapter of DOWER, &c.

* [200]

457. And it is to know, that a man shall not be tenant by the curtesy of right only, &c. nor of estates in suspense, if not that it be in special cases, &c. A man shall not be tenant by the curtesy, &c. of an use of lands or tenements, &c. A man shall not be tenant by the curtesy of a possession in law, &c.

458. And therefore, if a sole woman seized in fee of lands or tenements be disseised, and she taketh a husband, and they have issue, and the wife dieth before any re-entry made, &c. the husband cannot enter the lands and tenements, and have them as tenant by the curtesy, because there was but a right of entry or action, &c. to him and his wife during the coverture, as in the right of his wife: But if the wife during the coverture had entred into the same lands and tenements, her husband not knowing thereof, and the disseisor entreth during the coverture, and the wife dieth, the husband knowing of the entry

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entry of the wife, may enter and oust the disseisor of the same lands and tenements, and have and hold them during the term of his life as tenant by the curtesy, &c.

459. If a woman be seignores, and a man be tenant, and they intermarry, and have issue, and the wife dieth, the husband shall not be tenant by the curtesy of the seignory, because the seignory was in suspense.

* 460. But if a sole woman hath common * [201] or rent in fee, issuing out of land, &c. and H. : E. the tenant leaseth the same land unto a stran- 3. 6.

ger for the term of another man's life, and the woman marrieth with the lessee, for the term of another man's life, and afterwards the wife dieth, the husband shall be tenant by the curtesy of the common, &c. The same law shall be if a woman hath housbote and playbote appendant unto her inheritance; *mutatis mutandis*, &c.

461. If a sole woman hath a rent-charge in fee issuing out of land, and the tenant leaseth the land unto J. S. for twenty years, and the woman marrieth with the lessee, and they have issue, and the wife dieth within the term, *quære*, if the husband shall be tenant by the curtesy of the rent after the term determined, &c.

462. If there be woman seignores, and the tenant doth enfeof a stranger of the tenancy upon condition, and the woman seignores marrieth with the feoffee, and they have issue, and the condition is broken, and the wife dieth, and the feoffor entreteth upon the feoffee, and putteth him out of the tenancy

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nancy for the condition broken (during the coverture) yet the feoffee shall not be tenant * [202] by the curtesy * of the seignory, &c.

463. If a woman sole seised of land in fee enfeoffeth thereof a stranger unto the use of the woman and her heirs, and afterwards the wife taketh husband, and they have issue, and the wife dieth before any estate of inheritance executed in the wife, during the coverture, of the same land which was in use, the husband shall not be tenant by the curtesy of the use, &c. And so shall it be of an use of other things inheritable, *mutatis mutandis*, &c.

464. And if there be father and daughter, and the father is seised in fee of lands and tenements, and the daughter taketh husband, and they have issue, and the father dieth seised in fee of the same lands and tenements, and the daughter dieth before any entry made by her, or by her husband, or any other person or persons for them, the husband shall not be tenant by the curtesy of the said lands and tenements; because there was but a possession in law of the lands and tenements in his wife during the coverture. The same law is in all like cases, &c.

3 E. 3. 66. 465. And it is to know, that if before the statute of *Westminster 2. de donis conditionalibus*, cap. 1. lands have been * [203]

given unto the husband and his wife, and unto the heirs of their two bodies begotten, and the husband died, and she being seised of such estate in the same lands and tenements, taketh another husband, and they have issue, and th

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the wife dieth, the second husband shall be tenant by the curtesy of the same lands, &c. notwithstanding that the wife die after the said statute made; and the same appeareth by the words of the statute, which are, *Nec secundus vir*, &c.

466. And it is to know, that if a woman ^{8 Rep. 34.} sole, seised of lands in fee, taketh a husband, ^{b.} and hath issue, and the husband dieth, and ^{21 H. 3.} she being so seised, &c. taketh another husband, ^{298.} and hath issue by him, and the wife die, leaving the first issue, yet the second husband shall be tenant by the curtesy, &c.

467. If a sole woman seised of land in fee, ^{1 Inst. 29.} leaseth the same land unto *J. S.* for term of a life, and after she marrieth with *T. D.* and they have issue, &c. and the wife dieth, leaving the lessee for life, the husband shall not be tenant by the curtesy of this reversion: But *quære*, if the wife hath reserved a rent, &c. unto her and her heirs upon the lease, whether the husband shall have * the rent as * [204] tenant by the curtesy, or not. And if the lessee for life die leaving the husband, he may enter into the land, and hold the same for the term of his life, as tenant by the curtesy, &c.

468. If there be father and daughter, and ^{1 Inst. 29.} the father is seised of an advowson in gross, a. in fee, the daughter taketh a husband, and the father dieth, so as the advowson descendeth unto the daughter, and the daughter hath ^{M. 7 B.} issue by her husband, and dieth before that the ^{3. 69.} advowson doth become void, yet the husband shall be tenant by the curtesy: And notwithstanding

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H. 3 H. 7. 5. standing that the advowson doth become void during the coverture, and the wife dieth after the six months past, and before any presentment made by the husband, &c. so as the ordinary doth present for lapse unto this avoidance, yet the husband shall present unto the next avoidance as tenant by the curtesy, &c.

460. If a rent do descend in fee unto a married woman, and she dieth before any day of payment, yet the husband shall be tenant by the curtesy of the rent, notwithstanding that there was not any seisin of the same rent, during the coverture betwixt them; and notwithstanding that the day of payment of the rent incurred in the life * of the wife, and the wife dieth before any demand of the rent made by the husband, yet the husband shall be tenant by the curtesy, &c.

* [205] 470. But if possession in law of lands or tenements in fee descend unto a married woman, which lands are in the county of York, and the husband and his wife are dwelling in the county of Essex, and the wife dieth within one day after the descent, so as the husband could not enter during the coverture, for the shortness of the time, yet he shall not be tenant by the curtesy, &c. And yet, according to common preterice, there is no default in the husband. But it may be said, that the husband of the woman before the death of the ancestor of the woman, might have spoken unto a man dwelling near unto the place where the lands lay to enter for the woman, as in her right, immediately after the death of her ancestor, &c.

TENANT by the CURTESY.

471. And it is to know, that if the issue ^{1 H. 3.^d} which the husband hath by his wife, be born ^{188.} alive, notwithstanding it die before it be heard ^{1 Inst. 29.} to cry, and before it be baptised, if there be ^{b.} no laches in the husband of the baptism, by reason of any contempt, &c. the husband shall be tenant by the curtesy: But if such * laches, through contempt, be in the hus- * [206] band, some say, the husband shall not be tenant by the curtesy, &c.

472. If a man seised of lands in fee, as in ^{1 Inst. 30.} the right of his wife, be disseised thereof be- ^{a.} fore he hath issue, and afterwards he hath issue, and the wife dieth before any re-entry made, &c. yet he may re-enter, and have the land as tenant by the curtesy, &c.

473. And if there be husband and wife, and they have issue, and the issue dieth, and afterwards lands in fee simple descend unto the wife, and the husband entreth, and the wife dieth, he shall be tenant by the curtesy, &c.

474. If the husband, before issue had, ^{1 Inst. 30.} doth make a feoffment upon condition on ^{Hob. 480.} the part of the feoffee of land, which he holdeth in fee in the right of his wife, and afterwards he hath issue by his wife, and the condition is broken, and the wife dieth, now the husband may re-enter for the condition broken; and when he hath re-entred, he shall hold the same land as tenant by the curtesy; *tamen quere*, &c. But the law is contrary, if the feoffment had been made by the husband, being within age, &c. *mutatis mutandis*, &c.

TESTAMENTS.

- [207] 475. And if the husband and wife * are seised of lands in fee, as in the right of the wife; and this land is recovered against them by false swearing, and after execution sued thereof they have issue, and the wife dieth, now the husband shall have attain, and when he hath recontinued the land, and avoided the recovery by attain, he shall hold the same land as tenant by the curtesy. The same law is of a recovery had against the husband and wife by erroneous process; *mutatis mutandis*, &c.
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• [209] CHAP. VII. •

TESTAMENTS.

- 1 Inst. 11. 476. **N**OW we are to speak of testaments. And it is to know, that all manner of testaments are either testaments written, or testaments *nuncupative*: And a testament *nuncupative* is, when as the testator maketh his will by words before witnesses. But more properly it is said, a testament *nuncupative*, when the testator lieth languishing for fear of sudden death, dareth not to stay the writing of his testament; and therefore he prayeth his curate, and others his neighbors, to bear witness of his last will, and declareth by word what his last will is. And such will is as strong as a testament

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testament or will in writing, and sealed with the seal of the testator; if not that it be in special cases, &c.

477. And notwithstanding that a testament in writing be not sealed with the seal of the testator, yet it is good: But *quare*, if Dyer 72. it be good to make freehold or inheritance to pass.

478. If a man make a testament, or will, T. 2 H. 5. 8. and afterwards he maketh another will by word, and the latter will be proved before the ordinary, and by him * put in writing, * [210] and sealed with his seal, such latter will shall avoid the former will, if not that it be in special cases. And so always, the latter will and testament shall avoid the former will and Inst. 112. b. testament.

479. And if a man of sound memory 44 Aff. pl. 36. make two wills, that is to say, one testament in the sixth year of our lord the king, M. 44 E. 3. 33. that now is, and another testament in the eighth year of the same king, and after the testator sick in his death bed, and being dumb, and a man in the presence of his neighbours delivers both the testaments unto the testator, and he taketh them in his hand, and one of the neighbours willeth him that he deliver back unto them the testament, which he willeth shall stand and be his last will, and he deliver back unto them the testament with the former date, and keepeth the other testament by him, now the testament which is delivered back shall stand, notwithstanding that it hath the former date, and was written before the other testament, &c.

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T. 19 H. 8. 11. 480. And notwithstanding that the later will shall make void the former will, yet if

* [211]

a man be seised of land in fee, and thereof doth enfeof a stranger, and declare his will upon the livery of seisin made unto the stranger, that the feoffee shall be seised unto the use of the feoffor for the term of his life, the remainder unto Y. S. in fee, now he cannot alter this will * by a later will in prejudice of him in the remainder; because that the use is in him in the remainder presently, so as he may sell the same. But if in the same case, the remainder of the use made by me unto the right heirs of the feoffor, then the feoffor might alter this use by a later will. And if the feoffor had declared his will upon the livery of seisin, that the feoffee shall be seised unto the use of T. F. for life, the remainder unto the use of the feoffor for life, or in tail, the remainder unto the use of a stranger in fee, in that case, the feoffor cannot alter the will by his later will:

H. 31 H. 6.
Subpoena
23.

481. If a man seised of land in fee thereof doth enfeof a stranger unto the intent to perform his will, and afterwards the feoffor maketh his will, and deviseth the same land unto a stranger in fee, in this case, the feoffor may alter this will by a later will, because, that in this case, the devisee shall not have the land but by force of the will; and that cannot take effect but after the death of the devisor. The same law is of land, tenement, rent, common, &c. devisable by custom used in some places, &c. And also the

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the same law is of other chattels, reals and personals, devised; *mutatis mutandis*, &c.

482. And it is to know, that executors shall not have an action, as executors, before the testament be proved; and therefore, if the date of the probate of the testament * be ancients than the date of the making thereof, the writ shall abate, &c.

T. 7 H.
4. 18.
M. 18 E.
2.
Feoff. 110.
* [212]

483. And if the executors, nor any of them, will not prove the will, and a devise of a chattel real or personal is by the will, it seemeth that the devisee hath no remedy for to come to the thing devised; *tamen quare*. If he shall have remedy against the administrators, or administrator, if there be any, and if there be no administrator, *quare*, if he shall have remedy against the ordinary, &c. But this remedy against the ordinary seemeth to be but little; for if he shall have any remedy, it ought to be by suit in the spiritual court. More shall be said of this matter after, &c.

484. And forasmuch as it is necessary to have the testament proved, something shall be said concerning that; *viz.* By what persons the testament ought to be proved, and before what persons it ought to be proved, &c. And it is to know, that always the testament ought to be proved by the executors, or one of them at the least.

485. And if there be three executors, and two of them will not prove the will, nor meddle with the goods of the deceased, and the other executor proveth the will, notwithstanding this refusal made by the other

E. 12 E.
4. 23.

two

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two who were made executors; and notwithstanding that the will were proved by the
 * [213] third executor only; yet * the other two executors, and either of them may intermeddle with the goods of the testator, and administer them at what time soever they will; because that when the will is proved, they cannot be put out of the will; and the same will giveth them title for to administer the goods of the testator, as well as it giveth title unto him who proveth the will, in so much as that notwithstanding that they never administer, and he who proveth the will, will bring an action as executor of the same will; it behoveth him to bring the action in all their three names; but they shall not be charged as executors before they administer.

42 E. 3.
26.

M. 2 H. 3.

4

486. And it is to know, that testaments ought to be proved before the ordinary, if not, that it be in special places, where lords have the probate of the testaments of their tenants before their stewards, or before themselves in their temporal courts. And the reason why spiritual men have the proving of testaments is, because it is to be intended that the spiritual men have better consciences than laymen, and that they have more knowledge what thing is more for the profit and benefit of the soul of the testator, than laymen have; and that they will look more than laymen that the debts of the deceased be paid and satisfied out of his goods, and that they will see his will performed so far as his goods will extend, &c.

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* 487. But if the goods of the deceased * [214] will not extend to satisfy his debts, it shall be well done if the officers of the ordinary take nothing for the praising of the goods, nor for the probate of the will, nor for registering thereof, nor for any other thing concerning the will; for if they take their fees, by such means the debts of the deceased may not be satisfied and paid.

448. And notwithstanding that a man doth devise a chattel real or personal by his will, yet the executors are bound in law to pay the debts of the deceased, before they pay or deliver any legacies. And therefore the common law is, that the devisees of chattels real or personal cannot enter upon the legacies, nor take them without the assignment or delivery of the executors, or by their assent, or without the assignment or delivery or assent of one of them; and the reason is, because the soul of the testator shall not be in danger for the not payment of his debts, &c. T. 1 H. 6.

489. And it is to know, that wills proved before the Bishop himself of the diocese where the party dieth is good, if he have not goods and chattels of the value of 40 s. in any other diocese, for if he have goods and chattels of the value of 40 s. in two several dioceses, then it ought to be proved before the reverend father in God, *Thomas Lord Cardinal, Legate à latere*, Archbishop of, &c. Primate * and Chancellor of *England*, or his officer * [215] ; or before the reverend father in God, the

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T. 1 H. 6. the Archbishop of, &c. or his officers, or
6. before them both, or their officers.

490. A testament proved before the com-
E. 11 H. 4. miliary of the Bishop is sufficient, &c. And
64. a testament proved before the sequestrators of

T. 7 E. 4. the Archdeacon of such a place, and his seal
14. put thereunto is sufficient. For all testa-
ments cannot be proved before the ordinary
himself; and properly the probate of the
will doth belong unto him to whom the se-
questration doth belong.

3 E. 3. 491. A testament proved before any officer
Test. 5. of the ordinary deputed to the same is suffi-
cient; but always when the King's court
writeth unto any officer spiritual, they ought
to write unto him who is immediate officer
unto the court, which is the Bishop himself.

492. And sometimes the party shall be
T. 37 H. 6. driven to shew, how the Archdeacon, or
28. such other officer hath power to prove the
will, or to commit administration; and there-
fore if in an action of debt brought against
administrators, the plaintiff declare how that
the Bishop of *Winchester* committed admini-
stration unto them, &c. And the defendant
plead that the testator died intestate at *D.*
&c. and how that the official of the Arch-
deacon of the same place did commit admini-
stration * unto them, without that, that the
Bishop did commit the administration unto
them. The defendants ought to shew, how
the Archdeacon hath power to commit ad-
ministration, as by prescription, or by com-
position, or otherwise,

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493. And it is to know, that a testament proved is of so great force, that a man shall not have a direct traverse thereunto, nor unto the letters of administration; but the defendant may say against the testament, that the testator made not the plaintiff his executor, &c. And some have said, that because the writ ought to agree with the testament, that the testament is traversable; but that is false, for a *scire facias* to do execution ought to agree with the words of a fine, in the manner, &c. Yet the fine is not traversable directly, &c. and the reason why the testament is not traversable is, because that then it shall be tried by the certificate of the ordinary, and he will not certify contrary to that which is shewed unto the court under his seal, or under the seal of the officer deputed to the same.

494. If a testament bare date in *Cane* in *Normandy*, and be proved in *England*, it is sufficient for the executor to bring an action thereupon. But if an obligation be dated in *Cane* in *Normandy*, the obligee, nor his executor shall not have an action upon the same, &c.

D E V I S E S.

495. **N**OW is to speak of devises. And first is to shew what persons may make devises; and then unto what person a devise may be made, then what things may be devised, and when no estate is limited in the devise of land, tenement, or rent, &c. What estate the devisee shall have, and when the devise shall be determined as unto him in the remainder, by the act of him who hath, or shall have the particular estate of the thing devised by the devise upon which particular estate the remainder is dependant; and then how the devisees shall come unto the things devised, &c.

496. And it is to know, that all persons who may make testaments or wills, may make a devise of the same thing of which they may make a testament and will, and not of other things, if not that it be in special cases; and therefore if a parson of a church be seised of lands in fee in his own right, and doth enfeof a stranger of the same land unto the use of him and his heirs; now he, viz. the feoffor, may make a testament and devise of this use and his proper goods and chattels; but he cannot make a testa-

* [218]

ment nor * devise of a use of his glebe lands

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or tenements, or other things which he hath in the right of his church, &c.

497. An Abbot or Prior of a monastery M. 19 H. cannot make a devise of lands, nor of tenements devisable, nor of an use of lands, tenements, &c. Nor of goods, nor chattels, &c. But if an Abbot or Prior be created a Bishop, and by the same bulls of his creation, our holy father the Pope hath dispensed with him, and hath granted unto him to hold his Abby, and also the Bishoprick; if such Bishop and Abbot purchase the lands devisable in fee, he may make a will and devise of them; and if he purchaseth lands not devisable in fee, and thereof enfeofeth a stranger unto his use, he may make a will and devise of this use, &c. And of all his proper goods and chattels he may make a will and devise; but he cannot make a devise of lands or tenements devisable which he holdeth in the right of his Bishoprick, or in the right of his Abby; nor of a use of lands or tenements which he holdeth in the right of his Bishoprick, or in the right of the Abby; nor of goods and chattels which he hath in their rights, &c. *causa patet*, &c.

498. And a Dean, or master of an hospital, or guardian of an house, &c. cannot make a testament, nor a devise of lands or tenements, &c. or of an use of lands or tenements, &c. or of goods and chattels * * [219] which they have in the right of their Church or house. The same law is of Mayor and Commonalty, *mutatis mutandis*, &c.

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499. And therefore if a Dean and Chapter, or, &c. recover debt or annuity, or other thing in a court of record as in the right of their Church or house, &c. and die before execution sued, &c. his successor may have a *scire facias* to execute the same judgment, &c. But if they have lands or tenements devisable, &c. or an use of lands or tenements, or goods or chattels in their own right, they may make a will, and a devise of them.

500. A devise by one jointenant of land i Inf. 185. devisable, which he holdeth in fee at his death jointly with a stranger is not good; the same law is of a use in jointure, &c. But if such devisor doth survive all his companions, then such devise is good, as is shewed by Mr. *Litleton* in his third book, in the chapter of JOINTENANTS, and in NATURA BREVIUM, with the additions upon the writ of *Ex gravi querela*, &c. where are put many good cases concerning devises.

26 E. 3. 501. If a woman maketh a will of the goods of her husband, and dieth, and her 71. executor proveth the will, and after the pro- M. 5 E. 2. bate of the will, the husband doth deliver the Devise 14. goods devised unto the executors, now he hath made it a good will, notwithstanding that he was not privy * unto the making thereof; and yet a colourable argument may be made why it should not be good, by this delivery of the goods made by the husband, &c. for in so much as the wife had not leave of her husband to make a will, it is void, &c. but it cannot be said void, for that

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that it is proved. And also it shall be intended, that by the delivery of the goods by the husband, unto the executors of the wife, according to the will, that he did at the first assent unto the making of the will; and such leave or assent is sufficient by word, &c.

502. And a married woman may make a will of goods which she hath as executrix unto another man without the leave of her husband; as it appeareth in the Chapter of GRANTS. And a monk who is executor by the leave of his sovereign, may make a will of the goods which he hath as executor, &c. and divers other persons may make wills, as more fully appeareth in the Chapter of GRANTS; *mutatis mutandis*, &c.

11 H. 7.

14.

per Fineux

503. And an infant of the age of four years may make a will, and it shall be good for all his goods and chattels; because of such things the executors are accountable before the spiritual judge, or the ordinary; so as it cannot be intended, but that they shall be expended for the benefit, and profit of the soul of the infant.

504. But of freehold or inheritance * de- * [221]
visable, or of an use of freehold or inheritance, a devise made by an infant is not good; because they are at the common law; for the executors are not to intermeddle therewith, and the ordinary cannot demand account of them, &c. But if there be a custom, that M. 37 H.
all lands and tenements within such a precinct, &c. are devisable by all manner of persons, which are of the age of fifteen years, 6. 5.

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or above such age, a devise made of lands or tenements by one of such age is good. But if a man seised of such lands and tenements in fee, and thereof doth enfeof a stranger unto his use, and his heirs, and dieth, and his heir being of the age of fifteen years, maketh his will, and deviseth the same land given in use to him unto a stranger in fee, and dieth, this devise is not good, &c.

505. Now it is to shew, to what persons the devise may be made. And as to that, know, that a devise may be made unto all such persons unto whom a grant may be made, *mutatis mutandis*, if not that it be in special cases. And it is to know, that the devise ought to be good, and to take effect at the time of the death of the devisor, if not in special cases, otherwise it shall not be good. As put the case: A man seised of land devisable, devises the same lands unto the Priests of a College, or of a Chauntry, and there is not any such College or Chauntry at the time of the death of the devisor, and afterwards such * a College or Chauntry is made, yet the devise is void; because the devisees are purchasers; and when a man taketh lands or tenements by purchase, he ought to be of ability to take the same when it falleth unto him by the purchase; or otherwise he shall not have the same, &c. as it appeareth in the Chapter of GRANTS, &c.

T. 9 H.
6. 23.

506. If a man seised of land devisable in fee, deviseth the same land unto his wife for the term of her life, the remainder unto ʒ. his son, and unto the heirs male of his body begotten;

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begotten; and for default of such issue, the remainder unto the next heir male of the donor, and unto his heirs male of his body begotten, and dieth, and his wife entred by force of the devise, and afterwards *J.* his son dieth without issue male of his body living, the wife being tenant for term of her life, and afterwards she dieth, and one *P. D.* and *A.* his wife enter into the same land, as in *E. 49 E.* the right of *A.* his wife, as cousin and heir *3. 16.* to the donor, and have issue a son, and the *T. 9 H.* husband and wife by deed inrolled enfeof a *6. 23.* stranger of the same land in fee, and the said son, as next heir male, enter into the land, his entry is not lawful; *causa patet, &c.*

507. And it is to know, that a man may devise by his will, that his executor, or the executors of his executor, may sell his lands, *&c.* and the same is not, yet the executors of the executor were not * known at the * [223] time of the death of the deviser, but shall be *in esse*, and known at the time of the death of the executors of the deviser. See divers cases concerning this matter in the Chapter of GRANTS; *mutatis mutandis, &c.*

508. And if a man seised of land devisable *M. 30 E.* in fee, hath two sons and one daughter, which *3. 37.* daughter hath issue two daughters, and deviseth his land unto a stranger for life, the remainder unto his two sons for life, the re- *E. 21 R. 2.* mainder unto the next of the blood of his *Devise 27.* child, the deviser dieth, and the mother of the two daughters dieth, the stranger dieth, the eldest son dieth without issue, the second son doth thereof enfeof a stranger with war-

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ranty, upon whom the two daughters do enter, and the feoffee putteth them out, and they bring an assise, the assise will well lie. And it is to know, that if a man be seised of land devisable in fee, he may devise the same land unto his executors for years, for life, in tail, or in fee, &c.

Plowd.

503.

509. If a man seised of land devisable in fee, devise the same unto J. S. for life, the remainder *Ecclesie Sti. Andreae in Holborn*, &c. and the devisor dieth, it seemeth the remainder is good by way of devise; but otherwise would it be by way of grant; as it appeareth in the Chapter of GRANTS.

H. 26 E.

3. 3.

* [224]

510. But the commonalty of a Company, which is not incorporated by the * King's Charter to purchase, &c. cannot take by a devise. And therefore, if a man seised of land devisable in fee, deviseth the same land unto A. for life to find a Chaplain to sing for his soul in the Church of, &c. the remainder unto the brotherhood of the *Whiteacres* in London, to find a Chaplain, &c. now if the, viz. the *Whiteacres* be not incorporated by the King's Charter, and enabled for to purchase, the remainder is void. And know, that the chief and supream officers of the fraternity, corporation, or guild, are taken in law for the best men of the fraternity, corporation, or guild, &c. See divers cases concerning this matter in the Chapter of GRANTS; *mutatis mutandis*, &c.

49 E. 3.

Aff. pl. 2.

511. Now is to shew, what things may be devised. And as to that, know, that all manner of chattels, reals and personals, may be

D E V I S E S.

be devised; and freehold, or inheritance of lands and tenements, &c. devisable, or in use, may be devised, if not that it be in special cases. And as to chattels, reals and personals, it is to know, that all such chattels, reals and personals, which the executors shall have, may be devised, if not that it be in special cases, &c.

512. And therefore, if a man be seised of land in fee, or in fee-tail, and sow the same land, and deviseth the corn growing upon the land at the time of his death unto a stranger, it is a good *devise, notwithstanding * [225] that the land is not devisable nor in use, &c. But if the devisor had devised the trees growing upon the land at the time of his death, Wood's *Conv.* 859. the devise, as unto the trees, is void; because that the heir of the devisor shall have them, and not the executors, &c.

513. If a man seised of land in fee, as in *Inst.* 55. the right of his wife, leaseth the same land ^{b.} for years unto a stranger, and the lessee soweth the land, and afterwards the wife dieth, the corn not being ripe, in this case, the lessee may devise the corn growing upon the land; and yet his estate was certain and is determined: But a thing uncertain was the cause of the determination of his estate, &c. See divers cases concerning this matter in the first book of Mr. *Littleton* in the Chapter of *TENANT at WILL*, &c. *mutatis mutandis*, &c.

514. If tenant by the curtesy of lands or ^{10 E. 3.} tenements for life leaseth the same unto a ^{29.} stranger for years, and the lessor dieth within

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the term of years, in this case, if the corn were growing upon the lands, and not ripe at the time of the death of the lessor, the lessee may well devise the same, &c.

515. But if after the sowing, the lessee for years doth enfeof a stranger, and before the, &c. and the lessor doth enter for a forfeiture,

H. 40 E. 3. he shall have the corn, &c. The same law is of a lease for years upon condition, *muta-*

T. 37 H. *tis mutandis*, &c. And if land be recovered

6. 35. against lessee for * years into writ of waste,

* [226] he cannot devise the corn, notwithstanding it be growing upon the land at the time of his death, &c. And so, if land be recovered against his lessor by a more ancient title, &c.

M. 7 H. But otherwise it is, if a common recovery

7. 11. be had against his lessor in a writ of *entre en le poss*, or in any other writ by a false and feigned title, &c.

516. If a man seised of land in fee, doth thereof enfeof a stranger in mortgage upon payment and not payment on the part of the lessor, at a certain day, and the feoffee sowerth the land, and the feoffor payeth the money at the day appointed, and entreth, now the feoffee cannot devise the corn growing upon the land as it is said, *tamen quare*.

E. 44 E. 517. If a manor be put in execution upon

3. 14. a statute merchant, and he who hath the manor in execution hath a ward, after the execution by reason of the manor, which ward is as much worth as the debt doth amount unto, he whose lands are put in execution, shall have a *scire facias* against the conusee, &c. and shall have his manor back again;

But

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But if the conusee hath sowed the land, he may well devise the corn growing upon the land.

518. And if a man be seised of land in 7 Aff. pl. the right of his wife, &c. and soweth the 16. same land, and deviseth the corn growing upon the land, &c. and dieth before the corn Wood's be severed, the devisee shall have the corn, Conv. 859. and not the wife: But otherwise * is it of * [227] grafs not severed at the time of the devisor's death; &c.

519. If a disseisor be of land, and he sow- 37 H. 6. eth the land, now if the disseisee enter, or 35. recover by a writ of assise before the corn be H. 5 H. severed, he may devise the corn, and so may 7. 17. not the disseisor: But otherwise it should be 28 H. 6. if the corn be severed before his entry or be- 1. fore his recovery, notwithstanding that it 15 E. 4. remain upon the land, &c. For then the 30. disseisor may devise the same, &c. But the law is otherwise in the same case of trees severed which were growing upon the lands, &c.

520. And it is said, if tenant in tail of land leaseth the same land for life, and the lessee doth sow the same land, and the tenant in tail dieth, and the issue in tail doth recover in a *formedon en le disceñdor*, before the corn is severed, the issue in tail may well devise the corn; *tamen quære*.

521. If a man seised of land in fee, hath H. 9 H. issue a daughter, and dieth, his wife being 6. 6. great with child of a son, and the daughter Ent. cong. entreth and soweth the land, and after the 4. sowing, and before the severance, the son is 1 Inf. 55. born, b.

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born, and one of his next friends entréth for him, yet the daughter may devise the corn growing upon the land; *causa patet*. But If after the sowing, and before the son was born, the mother hath recovered her dower against the daughter, and the land sowed be

• [228] * assigned unto her by the sheriff for her dower in allowance of other lands, now the mother may devise the corn growing upon the land, and the daughter cannot; *tamen quære*.

522. And know, that the statute of *Merton*, cap. 2. which giveth, *Quod omnes viduæ de cætero possint ligare blada*, &c. as unto this point, is but in affirmance of the common law; for if tenant in dower, or, &c. soweth the land which she holdeth in dower, and maketh her executors, and dieth, the corn not severed, the executors shall have the corn, notwithstanding that they are not severed by the common law. And to be short, tenant in dower may devise the corn growing upon the land which she holdeth in dower at the time of her death, by the common law. And so was the law taken in *Anno 4 H. 3. Devise 6.* which was sixteen years before the making of the statute of *Merton*, &c.

523. If two tenants in common be of lands in fee, and one of them taketh a wife, and dieth, and his wife is endowed, &c. and she and the other tenant in common sow the land, &c. and afterwards she maketh her
H. 12 H. 7. 29. executors, and dieth, the corn not being severed, her executors shall have the corn in common with him who held in common with the tenant in dower.

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524. If the guardian in knights service assign unto the mother of the ward more land than she ought to have for her * dower, and she soweth the same land, and afterwards maketh her executors, and dieth before the heir be of full age, and afterwards the heir at his full age doth enter upon the corn not severed, he may put the executors of the tenant in dower out of the possession of the corn growing upon the land, whereof she ought not for to have dower. In the same manner shall it be, if the guardian in knights service endoweth the mother of the ward, &c. of more than she ought to have, &c. And the heir when he cometh at his full age, may sue forth a writ of *admeasurement* of dower, &c. [229]

525. And it is to know, that the wardship of body and lands, and a lease for years of lands and tenements, and a grant for years of a rent, and horses, kine, sheep, &c. and gold and silver, in plate, or money, and rings, or in any such manner; and beds, and pots, and pans, and platters, and all manner of chattels, reals and personals, whatsoever they be devisable, the executors shall have them, if they be not devised, &c.

526. But where a man hath a joint interest *Inst. 185.* in such chattels, &c. at the time of his death, a devise made thereof is nothing worth; *causa patet.* And where such chattels are annexed unto the freehold or inheritance, so as they cannot be severed from the same by him who hath property in them, then a devise made by him who hath property in them is not good.

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* [230] * 527. And if a man doth enfeof a stranger of land upon payment, and not payment on the part of the feoffee, *viz.* that if the feoffee pay unto the feoffor 20*l.* at the feast of *Easter* then next following, that then he shall keep the land unto him and his heirs; and if he do not pay, &c. that it shall be lawful for the feoffor to re-enter. Now if the feoffor make his will, and deviseth the money when it shall be paid to *J. S.* and dieth before the day of payment, it is a good devise conditionally, *viz.* if the feoffee payeth the money unto his executors. And so shall it be of 20*l.* payable at the feast of *Easter* upon one obligation, or upon a contract upon such condition as before is mentioned, *mutatis mutandis.* And yet if he had devised the obligation, or the counterpart of the indenture unto a stranger, the devisee could not bring an action in his own name upon the obligation, but he may give or sell the obligation unto the obligor, or unto a stranger, &c. And the devisee cannot enter into the land by force of the condition, notwithstanding that the consideration be broken, and that he hath the indenture; *causa patet.* But it seemeth, he may give or sell away the indenture, &c.

528. Now is to speak of devises of freehold and inheritance. And it is to know, that when freehold or inheritance doth pass from one person unto another by force of devise, it behoveth that it be * devisable or otherwise, in use; for if it be not devisable, nor in use, the devise is void. And it is to know, that before the statute of *Westminster* 3. which is called

* [231]

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called and known by the name of *Quia emptores terrarum*, &c. there was no use of lands or of houses, if not that it were expressed upon the delivery of the estate, &c.

529. And therefore, if before the statute of *Quia emptores terrarum*, tenant in fee-simple of land had enfeoffed a stranger without any consideration, and without expressing of any use, yet the feoffee should be seised unto his own use; for notwithstanding that no consideration were expressed, &c. yet the law made a consideration: For in the same case, the feoffee shall hold of the feoffor by the like services, as the feoffor held over; the which is a sufficient consideration to alter the use: But notwithstanding, if in the same case, it had been expressed in the feoffment, to have and to hold the land unto the feoffee, and unto his heirs, unto the use of the feoffor and his heirs, then the feoffee shall be seised accordingly. The same law is, if any other use be expressed in the feoffment, &c.

530. But if a man seised of a rent-charge in fee, before the statute of *Quia emptores terrarum*, grant the same rent unto a stranger in fee, without any consideration, and without expressing of any use, the grantee shall be seised unto the * use of the grantor and * [232] his heirs; because, that in this case, the law doth not make any consideration.

531. But it is said, that if a man be seised M. 14 H. of lands in fee, and grant a rent issuing out 8. 5. the same land unto a stranger, without any consideration, &c. the grantee shall be seised of this rent unto his own use; for the law cannot

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cannot intend such a grant to be made unto the use of the grantor. And it is said by some, that if a man hath common in grofs, which is certain in fee, and he grant the same common unto a stranger in fee, without any consideration, &c. that the grantee shall be seised of the common to his own use; because that the profit of a common is to be taken by the mouths of cattle, so as the profit is consum'd, &c. But as unto that it may be said, that it is as great profit for the grantee to have it for his cattle, as to have the value of the usage of the common in rent, &c. *tamen quære.*

532. If there be lord and tenant by homage and fealty, and the lord grant his seignory unto a stranger, unto the use of the grantor and his heirs, and the tenant attorn, the homage and fealty are not valuable; and yet the grantee is seised thereof unto the use of the grantor, to such intent, as the grantor may grant the seignory unto a stranger, or sell it, or devise it by his will, &c.

M. 14 H.
8. 5.

* [233] 533. And if tenant in fee-simple do * at this day enfeof a stranger thereof, without any consideration, &c. the feoffee is seised unto the use of the feoffor and his heirs; for the law in this case doth not make any consideration, for the feoffee shall not hold of the feoffor, &c. but he shall hold of him of whom his feoffor held, by force of the statute of *Quia emptores terrarum*. More shall be said of this matter in the Chapter of RESERVATIONS, &c.

534. And if a man at this day, or after the statute of *Westminster 2. cap. 1. De donis conditio-*

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conditionalibus, and before the statute *De quia emptores terrarum*, was, or is seised of lands in fee, and giveth the same in tail unto a stranger, without any consideration, &c. the donee is seised unto his own use; for the law maketh a consideration, by the way of tenure; *patet* how.

535. And if a man seised of land, leaseth the same without any consideration for life, &c. the lessee is seised unto his own use; and yet if nothing be reserved, he shall do only fealty unto his lessor and his heirs, or unto his grantee of the reversion, &c.

536. And if a lease for years be made without any consideration, the lessee is seised unto his own use. And yet according unto the opinion of divers men, lessee for years shall not do fealty, &c. But the reason is, because that the reversion * of the same thing * [234] remaineth in the lessor; so as the law cannot ¹ Inst. 67. intend that the intent of the lessor was, that ^{b.} the lessee shall be seised for his life, if he hath ^{contra.} not made expresse mention upon the lease. And also he may devise his land for years, notwithstanding that it be not devisable, nor in use, &c.

537. And if a man at this day be seised of a seignory, rent, or common in gross, which is certain in fee, and grant the same unto a stranger in tail, for life or years, without any consideration, they are seised thereof unto their own use; *causa patet*. But in all the cases of feoffments, grants, or leases, if a use be expressed in the feoffment, grant, or lease, &c. they, *viz.* the feoffees, donees, grantees, and

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and lessees, shall be seised unto the use expressed, if it be not against law. As put the case: It is expressed unto the use of a Monk professed, who is not sovereign of the house, &c. as is aforesaid, if a devise be made of freehold or inheritance, it behoveth, that the freehold or inheritance be devisable or in use, otherwise the devise is void.

538. And therefore, if a man be seised of land, rent or common, or, &c. in fee, not devisable, and deviseth the same unto a stranger in fee, in tail, or for life, and the devisor dieth, the devise is void, &c. But if a man be seised in fee of lands, tenements, rents, common, or, &c. devisable; or if a man be
 * [235] seised in fee of lands, * tenements, rent, or common, or, &c. not devisable, and thereof doth enfeoff, or grant the same unto a stranger in fee, unto the use of the feoffor, or grantor, and his heirs, &c. if he, viz. the feoffor, or grantor, deviseth the same lands, tenements, rent, common, or, &c. in fee, in tail, for life, or for the term of another man's life, it is a good devise, &c.

539. If husband and wife be joint purchasers, unto them and unto the heirs of the husband, of lands, tenements, or, &c. devisable, and the husband deviseth this fee simple after the death of him and his wife unto a stranger by his will, &c. it is a good devise, &c.

27 Ass. pl. 6. 540. If lands or, &c. be devised unto the husband and wife in tail, the remainder unto the right heirs of the husband, and the devisor dieth, and the husband and wife enter,
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ter, &c. and the husband deviseth this fee simple unto his wife and dieth, it is a good devise, &c. Know that the reversion of lands M. 34 H. or tenements devisable shall pass by the name 6. *terrarum seu tenementorum*, &c. See when Devise 4. one thing shall pass by the name of another, and when one thing shall pass as parcel of another, and divers other good matters concerning devises, in the chapter of GRANTS; *mutatis mutandis*, &c.

541. And if a man seised of land in fee, 39 Aff. pl. willeth by his testament, that his executors 3. shall sell the same land and distribute the profits coming thereof for his * soul, and the de- * [236] visor dieth; now the inheritance shall descend unto the heir, and shall continue in him until they, *viz.* the executors sell, &c. and then the executors may enter, &c. and thereof enfeoff the vendee according to the 39 Aff. pl. sale. 17.

542. But if lands devisable are devised unto the executors for to sell, &c. In this case the executors after the death of the devisor may enter into the lands, &c. because they 39 Aff. pl. were devised unto them. 3.

543. But if a man tender unto them money for the lands, but not so much as the lands Lit. §. 383. are worth, and they refuse it, to the end that they may sell the lands dearer, and for two years take the profits of the same lands unto their own use, the heir may enter and put out the executors; *causa patet*.

544. But if a man be seised of lands not devisable, and doth thereof enfeoff a stranger unto his use, *viz.* unto the use of the E. 9 H. 7. feoffor 29.

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feoffor and his heirs, and afterwards the feoffor deviseth the same land unto his executors for to sell, and dieth; in this case, the executors cannot enter into the lands, and continue possession thereof, because they have only a use of the land by this devise, but they may enter and thereof enfeoff the vendee, &c. by force of the statute of 1 R. 3. cap. 2. And so may every devisee of land in use do, &c. and also a gift, grant, release, lease, and confirmation, made by *cestuy que use*, &c. are good and effectual by force of the said * statute, viz. the statute, &c. but a devise made unto *cestuy que use* in tail is void; so is a devise made by tenant in tail of lands devisable, &c.

545. If a man maketh his will, and maketh
 E. 46 E. 3. two executors, and willeth that his executors
 Devise 8. shall sell his land, &c. and dieth, and one of
 Keilw. 44. them will not intermeddle, and the other executor taketh administration upon him, and payeth the debts, &c. The sale made by him alone is good; and if both the executors take upon them the administration, and one of
 Stat. 21 H. 8. c. 4. them will not sell, then the sale by the other executor alone is good; but if one of the
 39 Ass. pl. executors selleth unto one man, and the other
 Exec. 116. executor selleth unto another, it is said by some, that the sale of him which is most advantageous for the testator shall be good; but others say, that the first sale shall be good, and the other void, whether it be more beneficial for the testator or not. *Ideo quare.*

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546. But if the will be, that the executors ^{39 Aff. pl.} shall jointly sell, and one of them sell ^{116.} unto one man, and the other selleth unto another man, and afterwards both the executors join in a sale unto a third person; in this case the last sale is good, and the other sales are not good.

547. And if a man willeth, that his lands shall be sold for the payment of his debts, and doth not expresse by whom the sale shall be, it shall be sold by his executors, because the land shall be sold for * the payment of * [238] his debts, and the payment of the testator's debts, doth belong unto the executors, &c. ^{T. 15 H. 7.} But if a man willeth that his land shall be ^{12.} sold, and doth not say by whom, nor for what, it seemeth to be void; *tamen quære* the opinion of other men.

548. If a man willeth, that A. and B. his ^{M. 19 H.} executors shall sell his land, &c. and they ^{8. 9.} refuse before the ordinary, yet they may sell because they are certainly named; so as it ^{T. 15 H.} appeareth that the will of the testator is, ^{7. 12.} that they shall sell whether they refuse or not. But otherwise it shall be (as it seemeth) if he willeth, that his executors shall sell, without expressing their names, and they refuse before the ordinary, they cannot sell, &c.

549. If a man maketh J. S. his executor, and willeth that a Monk shall sell his land, and shall distribute the profit thereof ^{M. 19 H.} for his soul, the Monk is executor to his ^{6. 25.} purpose. If a man willeth that his executors shall sell his lands, and distribute the profits coming

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coming thereof for his soul, and they prove the will, and make their executors, and die before they sell, the executors shall sell the
 15 H. 7. same: But if they make no executors, their
 11. administrators shall not sell, for want of privacy, for the sale is a thing of trust, &c.

550. If a man willeth that his executors shall sell his land, if they all die but one before any sale made by them, he who surviveth may sell. If a man willeth * that
 * [239] J. his heir shall sell, &c. and J. dieth before the sale, his heir shall not sell the land.

551. If *cestuy que use*, willeth that his feoffees shall sell his land, they ought to sell jointly by reason of their joint possession, &c. But if all the feoffees but one die before sale made by them, then he who surviveth may sell, because that the possession of the whole is in him, &c.

M. 19 H. 552. If a man willeth that J. S. his now
 8. 9. executor shall sell his land, the executors of J. S. shall not sell the same, because it appeareth by the words of the will, that no other shall sell; and always he shall sell in whom confidence and trust is reposed. And therefore if a man willeth that J. S. Mayor of London shall sell, &c. and J. S. is Mayor of London at the time, and before the sale another man is chosen Mayor, in this case J. S. shall sell, and not the new Mayor. And so it is in the like cases, &c.

553. If a man willeth that his executors and his feoffees shall sell his land, and the executors shall sell without the feoffees unto
 one

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one man, and the feoffees without the executors sell unto another man, and afterwards the executors and the feoffees sell unto a third man; in this case the last sale is good, and the other two sales are not good, &c.

554. And it is to know, that when the land is found so as it cannot be sold, that the heir shall have the same. As put * case, a * [240] man seised of land devisable, deviseth by his will that his land shall be sold by his executors, and dieth; and all the executors die intestate before any sale made by them, or any of them, in such case the heir shall keep the M. 19 H. land: And if *cestuy que use* of land in fee 8. 9. willeth that J. S. now his executor shall T. 15 H. 7. sell, &c. and J. S. dieth before any sale 12. made by him, then the use is in the heir to T. 19 H. 8. keep to him and his heirs for ever, &c. 10.

555. Now is to shew, when no estate is limited in the testament or will unto the devisee, what estate the devisee shall have. And as to that, know, that when no estate is limited, that the devisee shall have an estate according to the intent of the devisor, which intent shall be expounded by the words in the will, if not that it be in special cases.

556. And therefore, if *cestuy que use* of land, or, &c. in fee, or of a man seised of land, or, &c. devisable in fee, deviseth the same land by his will unto J. S. Now J. S. shall have the same for his life, because that the intent of the testator cannot be otherwise taken by the words of the will.

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M. 22 E. 3. 557. If lands be devised unto *J. S.* to Devise 20. have and to hold unto him *in perpetuum*, Lit. §. 586. it seemeth that by these words he shall have 1 Inst. 9. an estate but for his life; for *in perpetuum* cannot extend further but unto the devisee;

* [241] and there are not more persons * named, &c. And the life of a man in this manner, is said as unto him *in perpetuum*, &c. *tamen quare*, If the words of the deviser were to hold, &c. unto the devisee in fee, without saying any more, the devisee hath an estate of inheritance in fee, &c. If lands be devised unto *J. S.* to hold unto him and his assigns, by these words the devisee shall have fee; the same law is, if it be devised to him and his assigns *in perpetuum*, &c.

M. 34 H. 6. 8. 558. If a man hath a lease for years, and deviseth by his will, that *J.* his son shall have this lease, *viz.* the residue of the years unto him and his heirs, and the deviser dieth, and *J.* hath the land leased which was devised unto him by the assignment, assent, or livery of the executors (as he ought to have) and maketh his executors, and dieth within the term; it is said that the heir of *J.* shall have the residue of the years, and not the executors, because that the possession thereof continued in the devisee not altered, and the will of the deviser is, that his heir shall have it; and also because the word (heir) in this case shall be taken as a name of purchase, so that if the term continueth at the time of the death of *J.* who is the devisee, that then his heir shall have the residue

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due of the term by way of remainder, by force of the devise, &c.

559. But if a man leaseh land unto me for years, to have and to hold unto * me * [242] and my heirs for years, and I make my executors, and die within the term, my executors shall have the residue of the years, and not my heir; *causa patet*. And in the principal case, if J. who was the devisee had granted the whole term unto a stranger, and afterwards died within the term, it is said by some that the heir shall not have any remedy. And by the like reason they say, that the executors of J. shall have the residue of the term and not the heir: But notwithstanding that the law be so, yet that doth not prove that the heir of J. shall not have the residue of the term; for if land devisable be devised unto me and my heirs, &c. and I enter and sell the land unto a stranger, my heir hath no remedy notwithstanding the devise; and yet if I do not sell, nor alien the same, but continue the possession thereof according unto the devise, at the time of my death, my heir shall have it according to the devise.

560. And if a man hath a term for years in land, or, &c. in the right of his wife, and he granteth the whole term unto a stranger, and dieth within the term, his wife hath no remedy to have the residue of the term; but if the husband hath not granted the term unto a stranger, but continueth in possession at the time of his death, and dieth within

M. 7 H. 6.
1.
Wood's
the Conv. 861.

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the term, his wife shall have the residue of the years, &c.

* [243]

* 561. If a man seised in fee of white acre and black acre devisable, and deviseth white acre unto *S.* to have and to hold to him and the heirs of his body begotten, and deviseth black acre unto *T. K.* to have, and to hold in the same manner and form as *J. S.* holdeth white acre; by these words, *T. K.* shall have an estate tail in black acre; and the reason is, because that the will, and the intent of the giver shall be observed; see divers cases concerning this matter in the chapters of GRANTS, FAITS; *mutatis mutandis*, &c.

M. 34 H.
6.-7.

562. And as it is said, the will of the devisor shall always be observed, if it be not impossible or much against the law, and in other special cases, insomuch, as if a man seised of land devisable, leaseth the same land unto a stranger for life, and afterwards by his will deviseth the reversion of the same land unto the stranger in fee, and dieth, it is a good devise without attornment; the same law is of a rent devisable, &c.

29 Aff. pl.
17.

* [244]

563. If a man seised of land devisable in fee, deviseth the same unto *J. S.* Clerk, upon condition that he shall be a chaplain; and shall sing for the soul of the devisor all his life, and that after his decease the land shall remain unto *T. S.* Mayor of *S.* and his successors, to find a Chaplain perpetually for to sing for the soul of the devisor, and the devisor dieth, and *J. S.* being of the age of twenty-four years entreth * and holdeth the land

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land for six years, and is not a Chaplain, the Affize 28. heir of the devisor may enter for the condition broken; and yet the remainder shall not be defeated, but shall take effect after the death of the devisee for life; *tamen quare.*

564. But if there be lessee for life, the remainder unto a stranger in fee by deed indented, upon condition that the lessee shall pay yearly ten shillings at the feast of *Easter* unto the lessor and his heirs, and after the condition is broken, for which the lessor doth enter, now by his entry the remainder is defeated; because it was all by one deed, and the condition did depend upon the whole estate, &c. and the lessor cannot have a lesser estate when he entreteth for the condition broken, than he had at the time when he left the possession, &c. no more than a man seised of land in fee by matter in deed or in writing can lease the same land for life, reserving unto himself a lesser estate in reversion than a fee, &c. And yet in the case of a devise, the remainder shall not be avoided by the entry of the heir for the condition broken; because the will of the devisor shall be observed inasmuch as it may be, &c.

565. And if a man seised of land in fee, lease the same land for life, the remainder unto a stranger in fee, reserving unto the lessor and his heirs ten shillings rent; and if the rent be behind, &c. that the lessor * and * [245] his heirs shall enter for the condition broken, and shall retain the land during the life of the lessee, and no longer. If the lessor enter for the condition broken, in the life of the lessee,

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and

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and afterwards the lessee dieth, he in the remainder may enter upon the lessor, and have his remainder, &c. And know, that in the principal case, the remainder cannot take effect presently after the condition broken, because the devise was once effectual in the devise for life.

566. But if land be devised for life, the remainder unto a Monk for his life, the remainder unto a stranger in fee, in this case, the last remainder shall take effect presently after the death of the first devisee for life, notwithstanding that the Monk be alive, &c. And the reason is, because the remainder never took effect in the Monk; and also there is a particular estate, upon which the remainder doth depend; and therefore in this case, the remainder in fee shall be good notwithstanding that it was by way of grant, &c.

567. If a man seized of land devisable in fee, doth devise the same unto a Monk for life, the remainder unto a stranger in fee, and the deviser dieth, the Monk being alive, in this case, the remainder shall take effect presently; because the Monk took nothing by the devise; and notwithstanding that there be not any particular estate upon which the remainder doth depend, yet the remainder is good; for that the will of the deviser shall be observed inasmuch as it may be, &c.

568. But if a lease of land be made unto a Monk for life, the remainder unto a stranger in fee, this remainder is void, &c. If land be devised unto J. S. for life, the remainder

* [246]

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remainder unto T. K. in fee, and Y. S. dieth M. 3 H. 6. before the deviser dieth, and then the deviser dieth, it is a good remainder to T. K. and shall presently take effect, &c.

569. If a man seised of land devisable in fee, do devise the same land unto Y. his son in tail, the remainder unto a stranger in fee, and Y. entreteth into the land, and saith that he will occupy the land as heir, and not by force of the devise, yet notwithstanding such disagreement he shall be seised by force of the devise; for his father might have devised the land unto a stranger in fee, and the son was without remedy; and therefore if he will have the land, he shall take it as his father gave it unto him; for otherwise it should be at his will and liberty, whether the will of his father shall be observed or not, which the law will not suffer. But he may refuse the possession and not meddle with the same, still so may disagree. For a man shall not be compelled to take by a devise whether he will or no. And notwithstanding that he had so disagreed to the devise, the remainder shall not be avoided. And it * seemeth to some, * [247] that then he in the remainder may enter, 1 Inst. 298. and presently execute the remainder; *tenere quare*, &c.

570. Now is to know, how the devisees shall come by the things devised. And as to that, know, that for all chattels, reals and personals, devised, if the executors will not deliver, assign, or pay them unto the devisees, that they have no other remedy but to sue for them in the spiritual court; for the law doth

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more respect the soul of the devisor than the devisees; and therefore the law will not suffer the devisees to take their legacies out of the possession of the executors in despite of them, because the legacies shall not be assigned, delivered, or paid, until all the debts of the testator be satisfied and paid; insomuch as if the executors assign, deliver, or pay the legacies, before the debts of the testator are paid, and there be not sufficient goods of the testator to pay his debts, the executors shall be charged of their own goods, &c.

571. And it is to know, that if the executors will, that they may use such deceit that the legacies shall never be assigned, delivered, or paid, notwithstanding that they have goods in their hands of the testator's of the value of one thousand pounds over and above the debts and legacies of the devisor, &c. For they may cause strangers to bring actions of debts against them as executors upon * false obligations, &c. And so they may always plead, when the devisees demand or sue them for their legacies in the spiritual court, that the debts of the testator are not paid, and that there are more suits against them, than the goods of the testator are sufficient to satisfy or pay; and by such covin they may defraud the devisees of their legacies; and the executors may, or one of them may, by covin confess the plaintiff's action, and execution may be sued against them by covin, &c. or otherwise they may deny the obligations, by pleading that they were not the deeds of the devisor, &c. and they may give

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give such evidence, that it shall be found against them, &c. And by such deceit, and divers other covinous means, the devisees may be defrauded of their legacies; for such deceits may be so secretly done, that they shall not be intended covinous. And therefore it shall be well for such devisors to deliver such things, or cause them to be given or delivered unto them in their life-times, and not to give them by way of legacy; and the same is a good and sure way to execute their intents. And divers other good and sure means there are, &c.

572. But if a man maketh two executors, 11 H. 4. and by his will giveth 20 l. to one of them, 81. he may take his legacy without the assent of his co-executor, notwithstanding that he hath not administered before, &c. If the testator hath land * for the term of twenty years, and he deviseth the same land unto one of his executors, he may enter and occupy the land according to the devise without the assent of the other executors, &c. * [249]

573. If the testator have lands for the term of twenty years, and deviseth the land for parcel of the years unto one of his executors, the remainder unto a stranger, if the executor who is the devisee doth enter, and occupy solely, by force of the devise after the years determined, the stranger who is the devisee in remainder may enter and occupy the land during the residue of the years, if the other goods of the testator were sufficient to satisfy and pay all the testator's debts. *Quere*, If the goods of the testator be not sufficient to

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satisfy and pay his debts; but it seemeth he may enter notwithstanding that, because the devise was once executed, &c.

574. But if the testator had devised parcel of the years unto all the executors, &c. the stranger who is remainder shall not enter, nor occupy without the assignment of the executors; because it cannot appear, whether they occupy the land as executors, or as devisees. And therefore it shall be taken, that they occupy as executors, and not as devisees; for that is more for the benefit and profit of the soul of the testator; *tamen quare*, how they shall be adjudged in the land in such case, &c.

* [250] * 575. If a man hath land for term of years, and maketh his will, and deviseth the same land unto Alice the wife of J. S. and maketh the same J. S. his executor, and dieth, and J. S. entresth into the land, and occupieth the same, but it doth not appear whether he occupieth the same as executor, or in the right of his wife, and J. S. maketh his will, but saith nothing of the term in his will, and maketh T. K. his executor, and dieth within the term, it seemeth that the wife, who was devisee, cannot enter in the land devised unto her without the assignment or assent of the executor of her husband; *tamen quare*.

576. And to come unto freehold, or inheritance devised, know, that the ordinary cannot intermeddle therewith; for such estates do not appertain unto the executors if a devise of them had not been made. And it is
to

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to know, that sometimes a man cannot enter into a freehold or inheritance devised unto him, without assignment or livery thereof made unto him.

577. And therefore it was used within the City of *London* in the time of king *Edward* the third. If a devise had been made of tenements in *London* for life, in tail, or in fee, &c. the will as to the same ought to have been proved in the Guild-hall of the City; and when it was proved, seisin was given thereof. And if in such case, the deviser had entered of his own head, * without livery or assignment, the heir might have had an assise of *Mortd'anceſſor* against him. And the same law was for tenements in *Oxford* devised in fee, in tail, or for life, *autem autandis*; which wills so proved, and proclamations thereupon had, bind all manner of persons so strongly as a fine with proclamation; if they do not make their claim unto the same tenements within one year after the proclamations made. And to know, that of freehold and inheritance devisable, it shall be always according to the custom, if it be reasonable, &c.

E. 49 E. 3.
Devise 8.

* [251]

578. But of freehold and inheritance devisable whereof such a custom to prove the will was not used, nor any other custom, but only that they are devisable; in such cases the devisees, after the death of the deviser, may enter without any assignment, if the devise be of land, or of a house, whereof their estate ought by the devise to be presently executed.

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579. And when freehold or inheritance of lands, tenements, &c. which are at the common law, or in use, are devised by *testary que use*, by his will, the devise is good notwithstanding that the will be never proved; because the ordinary hath not to do with freehold or inheritance. And in such cases, the devisees thereof may make a feoffment, gift, grant, lease, release or confirmation, as the case shall require, by force of the statute of H. 3. cap. 1. But it is to know, that nothing * shall pass by the devise of *testary que use*, but that which may lawfully pass from him.

580. And therefore, if a man seised of land, do thereof enfeoff J. S. unto the use of T. K. and Alice his wife, and unto the heirs of T. K. and T. K. deviseth the same land by his will unto a stranger in fee, and dieth, living the wife, that in this case, the wife shall have the use of the whole land during her life, notwithstanding the devise of her husband; *causa patet*, &c.

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581. **N**OW is to speak of surrenders. ^{1 Inst. 337^l}
 And first, What things may not ^{2.}
 be surrendred by deed, and what ^{Wood's}
 may. And as to that, know, that where a ^{Conv. 812.}
 just grant, or other thing cannot take effect
 without a deed, such estate or thing cannot
 be surrendred without deed, if not that it be
 in special cases.

582. And therefore, if a man seised of
 rent-service, rent-charge, rent-seck, com-
 mon for years, or, &c. in fee, &c. and grant
 the same for life or for years, by deed (as he
 ought) the grantee cannot surrender the same
 without deed.

583. But if lessee for life be of land, or ^{H. 19 H.}
 of a house, and the grantor grant the rever- ^{6.}
 sion unto a stranger for life, and the lessee ^{Surren. 4.}
 attorn, the grant is void if it be not by deed. ^{M. 14 H.}
 And yet if the lessee dieth, and the grantee ^{7. 3.}
 entreth into the land, he may surrender the
 same without deed; and out of the land, if
 the surrender be made within the county
 where the land is: But if the surrender be ^{H. 12 E.}
 made in another county, it ought to be by ^{3.}
 deed, &c. And lessee for life of land, or of ^{Surr. 21.}
 a house upon condition by deed indented,
 may surrender his estate without deed. The
 same law is of lessee for years, &c.

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* [254] * 584. Now is to shew what estates may be surrendered, and unto what persons they may be surrendered, &c. And it is to know, that particular estates, as for life, or for years, may be surrendered unto him who hath the immediate remainder, or reversion unto the particular estate in his own right, if the estate in remainder or in reversion be such an estate wherein the particular estate may be drowned, if not that he who surrendreth have not a joint estate in the freehold, or in the term for years, with him unto whom the surrender is made; and in other special cases, &c.

H. 13 H. 4. 585. And estates in fee of some things
Surr. 10. issuing out of lands, may be determined by the surrender of the deed unto the tenant of the land, by which deed it was granted, &c. And it hath been holden, that an estate in fee of lands, or tenements, may be surrendered by the tenant unto his lord, who hath cause to have an action of *Cessavit* of the same lord; *quare*. But it is clear, that tenant in fee-simple at the will of the lord according to the custom of the manor, may surrender according unto the custom of the manor, &c.

586. If a man doth enfeoff J. S. and T. K. of certain land, to have and to hold unto them and unto the heirs of T. K. and J. S. surrendreth his estate unto T. K. it is a void surrender, notwithstanding that J. S. had that freehold, and T. K. had a * fee ex-
12 H. 6. Surren. 6. pectant to be executed in possession immediately after the death of J. S. And the
* [255] reason.

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reason is, because that T. K. had a joint possession in the freehold, which J. S. and every jointenant is seised of the whole; so that the surrender cannot be the cause, that he hath the possession of any part of the land; and also his estate cannot drown in the estate of T. K. for either of them hath an estate of freehold in possession, in and through the whole land.

587. If J. S. S. K. and D. C. be joint tenants of lands, to have and to hold unto them, and unto the heirs of T. K. and afterwards J. S. doth release all his right unto D. C. and afterwards D. C. doth surrender unto T. K. &c. it is a good surrender for the third part of the land, &c.

588. If a lease for life be made of land, the remainder unto a stranger for life, the remainder unto another stranger in tail, and the lessee doth surrender unto him in the remainder in tail, or unto his lessor who hath the fee in reversion leaving him in the remainder for life, this surrender is void, so take effect as a surrender; because that he unto whom the surrender is made, hath not the immediate estate in remainder unto him that maketh the surrender. But if he who made the surrender had but an estate for years, and in the surrender there be words which amount unto a grant of his estate, then the surrender shall take the same by way of grant of his estate, &c. [256]

589. If a lease for life be of land, the remainder of the same land unto a stranger for years, and the lessee for life doth surrender

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his estate unto him in the remainder for years, it cannot take effect as a surrender; because that an estate for life cannot drown in an estate for years.

590. If donee in tail of a rent, &c. surrender his estate unto his donor who hath the reversion of the same land in fee, it is a void surrender: But if lessee for life be of land, the remainder unto a stranger for life, and the lessee doth surrender unto him in the remainder, it is a good surrender; for he unto whom the surrender is made, hath an estate for his own life in remainder; and an estate for a man's own life, is a higher estate of freehold unto him, than the estate for the life of another man is. In the same manner as it is of land, shall it be of all rents, commons, corodies, &c. *mutatis mutandis*, &c.

H. 12 H.
7. 11.

591. And it is to know, that if J. S. be seised of the manor of Dale in fee, and granteth a rent issuing out of the same manor, or a common, or any other thing in fee, if the grantee doth surrender the deed by which the said rent, or, &c. was granted unto him, either unto his grantor, or unto any other person being tenant of the same manor, notwithstanding that the tenant of the manor be with divers others jointly seised * of the same manor; and notwithstanding that he hath not but an estate for years in the same manor in remainder: By the surrender of this deed unto him, the rent, or, &c. is determined and extinct.

* [257]

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592. But if the grantee had recited by another deed, how a rent-charge was granted unto him, and reciting in the same deed all the effect of the grant, grant the same rent unto the lessee for life, of the manor, to have and to hold unto him and his heirs, and surrendreth unto him the deed by which the grant was made unto him, and at the same time deliver his deed of grant unto the lessee, the same shall not enure nor take effect to determine and extinguish the rent; but shall take effect by way of grant, to take effect after the death of the grantee. For at the time of the grant made unto him, he had possession and seisin for his life of the manor out of which the rent was issuing, so that the grant could not take effect in him presently, but notwithstanding that the grant shall take effect in his heir, if some other act be not done to hinder the same. As if the lessee grant the same rent unto a stranger, or otherwise purchaseth the reversion of the manor out of which the rent is issuing, so as the fee of the manor is executed in him, &c. Or if the lessee in the same case enfeoff a stranger of the manor, and the lessor * entreteth for a forfeiture, the rent is determined and extinguished, because that the lessee had the fee of the rent at the time of the feoffment, to grant or to forfeit, &c. And by the feoffment he departed with the land in fee discharged of the rent; so that by this feoffment the rent is determined and extinguished, &c.

* [258]

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593. But if the lessee of the manor, after the purchase of the rent commit waste in the whole manor, or in parcel thereof, for which the lessor doth recover in an action of waste; yet the lessee shall not have this rent during his life: But *quære*, if the lessee after the purchase of the rent, and before any waste done; grant the rent unto a stranger, and afterwards doth commit waste, if the grantee shall have rent against the feoffor during the life of the lessee; *Est.*

594. But if a man be seised of a rent-charge in fee, issuing out of a manor, or other land, and the tenant of the rent, or of the land is disseised, and the grantee of the rent doth surrender his deed of grant unto the disseisee; it seemeth the same is no determination of the rent at this time; and yet the disseisee is tenant unto the lord, as he is now upon him. But if the disseisee doth re-enter; then it seemeth the rent is determined and extinguished, if he hath the deed of the grant of the rent in his possession, by force of the surrender of the same deed; *Est.*

• [259.] 595. If a man seised of land in fee, granteth a rent-charge out of the same land in fee; and the grantor dieth without heir, and before any entry made into the land by the lord or any other person, the grantee doth surrender his deed of grant unto the lord: *Quære*, if the rent be immediately determined and extinguished, because that the lord had but a possession in law in the land out of which the rent was issuing at that time.

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time of the surrender made; yet it seemeth the rent is immediately extinguished, &c.

596. But if a man who is tenant in tail of such a rent or common, &c. surrendreth his deed of grant unto his grantor, or unto another who is tenant of the land out of which the rent is issuing, it shall not extinguish the rent, or, &c. *causa patet.*

597. But if the grantee of a rent-charge in fee, grant the same rent in fee unto him who is seised of the land out of which the rent is issuing in fee, the same shall enure and take effect to determine and extinguish the rent; as it appeareth in the chapter of GRANTS, &c.

598. If tenant in tail doth discontinue the E. 20th L. tail in fee, and dieth, and the issue in tail bringeth a *formedon* against the discontinuee, and pendant the suit sheweth the deed of entail unto the tenant in the county, and the tenant seeing the deed, doth surrender unto him, &c. the same is no good surrender. 21. 34 Aff. pl.

599. And notwithstanding that some particular estates may be surrendered in manner and form as is aforesaid, yet it behoveth that he that doth surrender be seised or possessed of such estate at the time of the surrender; otherwise such surrender shall not be good, if not that it be in special cases. [260]

600. And therefore if lessee for life, or for years of land, be ousted of the land by a stranger, and after the ouster, and before his entry, he doth surrender unto his lessor, it is no good surrender, because he hath but a right at the time of the surrender, &c. And therefore

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therefore if a woman hath title to have dower by the common law, and she doth surrender unto him against whom she ought to have dower, it is a void surrender.

601. If a lease for ten years be made to
M. 21 E. 3. begin at the feast of St. *Michael* the Arch-
37. angel next after the lease, and before the feast
E. 37 H. 6. of St. *Michael* the lessee doth surrender un-
48. to lessor, it is a good surrender, yet he might
have granted the same before the said feast
of St. *Michael*. But the surrender is not
good, because that the lessee is not in seisin
and possession *legaliter* of the thing leased
before the feast of St. *Michael* come, &c.

602. And a release made by the lessor un-
M. 15 H. to the lessee before the term doth begin is
7. 14. void; and notwithstanding that the lessee be-
T. 4 H. 7. fore the term doth begin do enter into the
14. thing leased unto him, and do an act which
* [261] amounteth unto waste, * the lessor shall not
have an action of waste for the same. And
if the lessee after the term begun, and before
he doth enter by force of the lease, doth sur-
render unto his lessor, it seemeth to be a
void surrender, if any other person be in pos-
session of the thing leased at the time of the
surrender, if not that he hath parcel of the
term of the lessee, by force of the grant of
the lessee, &c.

603. If a man seised of land, do lease the
same for ten years to begin presently, and
the lessor waiveth the possession, and before
any entry made into the same land by any
person, the lessee doth surrender his estate
unto his lessor, it is a good surrender, and
yet

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yet the lessee shall not have an action of trespass for a trespass done upon the land before his entry; and also a release made unto him by his lessor is void before his entry, &c.

604. And if there be lessee for ten years of land, and he grant parcel of the years unto a stranger, and the grantee doth enter, &c. and the lessee doth surrender unto his lessor, it is a good surrender; but if the grantee of the lessee had surrendred unto the lessor of his grantor before the surrender made by the lessee, the same shall not take effect as a M. 14 H. surrender; *causa patet.* 7. 3. *

605. If there be lessee for years of land, the remainder of the same land unto a stranger for life, the remainder unto another in fee, and during the years, he * in the remainder for life doth surrender unto him in fee, it is a good surrender: But if in the same case the lessee for years had been put out of the land by one that had no right, and he who put him out dieth seised of the same land, and his heir doth enter upon whom the lessee for years doth enter, and then, he in the remainder for life doth surrender unto him in the remainder in fee, the same is a void surrender, because he had but a right to the remainder, and also he unto whom the surrender was made, had but a right of remainder in fee at the time of the surrender, &c. * [262]

606. If there be grantee of a rent-charge in fee, and a stranger is purvor of the rent, and the grantee doth surrender his deed by which the grant of the rent was made unto the tenant of the land, the same shall determine and extinguish the rent, notwithstanding

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ing that the purvance be made with the assent of the tenant of the land, &c. And it is to know, that there are two manner of surrenders, viz: a surrender in deed, and a surrender in law. And first is to speak of a surrender in deed, and what words make such a surrender.

607. And as unto that, know, that when the words prove a sufficient assent and will of him who is the particular tenant, that he in the remainder or the reversion shall have the thing which he hath or holdeth, they are words sufficient * to make a surrender, if his unto whom the surrender is made do agree therunto.

E. 40 E. 3. 24. 608. And therefore, if lessee for life or for years of land, say unto his lessor, that his will is, that his lessor shall enter into the land which he holdeth for life, or for years, and shall have the same, and by force thereof the lessor doth enter into the same, it is a good surrender; and so shall it be, if he say unto his lessor, or unto him in the next kind, or reversion, that he will that his have the land, and the lessor doth enter by force thereof, or agreeth therunto, it is a good sur-

H. 6 E. 3. 7. render: But if the lessor, or, &c. doth not enter by force thereof, nor agreeth therunto, the surrender is not good; for he cannot surrender unto him against his will: But if he unto whom the surrender is made do once agree to the same, he cannot afterwards disagree therunto.

Affile 403. And in the time of King E. I. the lessor did enter into the land leased for life, with the assent of the lessee, and because it was not in the presence of good men of

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of credit, it was holden to be a void surrender. But the law is otherwise at this day, &c.

609. And if the lessee cometh unto him in the remainder, or in the reversion, and saith unto him, that he will occupy the land no longer, and he in the remainder by force thereof doth enter, it is a good surrender. And if the lessee doth say unto his lessor, I do surrender unto * you the land which I * [264] hold of your lease; or if he said, I hold such land, or house, &c. and sheweth certain the land or house, &c. of your lease, and I do surrender the same land or house, &c. unto you, and the lessor doth agree therunto, the same is a good surrender.

610. And if J. S. holdeth one acre of land for years of the lease of C. D. and holdeth another acre of land for life of the lease of the same C. D. and J. S. doth say unto C. D. I surrender unto you all the land which I hold of your lease, it is a good surrender for both acres: So shall it be, if he say I surrender unto you the land I hold of your lease, for inasmuch as he doth not express what land, it shall be taken for all the land which he holdeth of his lease, because the surrender is his act and deed; and the same shall be taken strongest against him, &c. But if he had surrendered the land which he held of his lease for years, he shall not have by this surrender the land which he held for his life; for shall it be otherwise, &c.

611. If I hold one acre of land for life of the lease of the father of J. S. and I hold one

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one other acre for life or years of the lease of J. S. and I surrender unto J. S. the land which I hold of his lease, by this surrender he shall not have the land which I hold of the lease of his father, notwithstanding that the reversion of the same acre be in him by descent from his father, &c.

* [265]

* 612. If a woman who is tenant in dower taketh a husband, and the husband doth surrender the land which he holdeth in the right of his wife for the life of the wife, it is a good surrender during the coverture. And if the husband dieth before the wife, or if they be divorced *causa præcontractus*, the wife may enter and defeat the surrender, notwithstanding that he to whom the surrender was made died seised of the land in his demesne as of fee, and his heir be in by descent; the same law is, if the surrender be made by the husband and wife, &c.

613. But if a sole woman who is lessee for years of land, or a house, &c. taketh a husband, and the husband doth surrender the land, and dieth before the years re-determined, yet the surrender shall stand. If a man be seised of land for the life of his wife, in the right of his wife, and he and his wife will surrender the same land by fine, the wife shall be examined, because she giveth by fine; and no particular tenant can surrender by fine if he be not named in the writ whereupon the fine shall be levied.

H. 15 E. 3. 614. A surrender made by an infant by word.
Dures 13. of mouth off the land is not good, insomuch as, if he surrender an estate of freehold, and by

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by force hereof he to whom the surrender is made doth enter, the infant shall have an assize: The same law is of a surrender made by duress of * imprisonment; a surrender * [266] made by a man who is not *compos mentis* is 5 E. 4. 4. good for ever; *tamen quare, &c.*

615. If two men seised of land in fee, lease the same land unto a stranger for life or for years, and he doth surrender all his estate in the land unto one of them, the same shall enure unto them both. See the reasons thereof in the chapter of GRANTS, &c. But if the lessee for life hath surrendred the lands unto both the lessors, or unto one of them for twenty years, the same shall not take effect by way of surrender, for then there remaineth an interest in the lessee, which is as a mesne remainder between the estate which is surrendred, and their reversion, &c. In the same manner as it is of surrender of land, so shall it be of surrenders of deeds, or of any other things; *mutatis mutandis, &c.* 1 Inst. 214.

616. If a man seised of land, lease the same land for life, and granteth the remainder unto a stranger for life, and the lessee for life granteth his estate unto him in the remainder for life, the law saith that this shall enure by way of surrender; so shall it be, if the lessee for life doth enfeof him in the remainder for life; the same law is, if a man seised of land in fee lease the same for life, and the lessee doth thereof enfeof his lessor, &c. M. 14 H. 8. 15.

617. If lessee for ten years of land, doth take a new lease of the same land * of his * [267] lessor for twenty years, it is a surrender of the first lease, &c. But if lessee for life or years

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years of a house and land, do remove his goods, and chattels out of the house and land, by reason of the greatness of the rent, or because he is behind in his rent, or for any other cause, and the lessor doth enter into the house and land, this is no surrender; for it doth not appear that the will of the lessee is, that his lessor shall have the house and land, but that he waiveth the possession for his own advantage.

• A. pl.
20.
T. 8 E. 3.
46.

618. If lessee for life of land, grant his estate unto him in the reversion, and unto two other men, it is a surrender for no part; and yet if there be lord and tenant by fealty and twelve-pence, and the lord grant his feignory unto the tenant, and a stranger in fee, the moiety of the rent shall be extinguished in the tenancy; for it should be inconvenient, that the tenant should have rent issuing out of his own land, unto his own use; and the other moiety of the rent with the fealty, the grantee shall have the same, &c.

M. 7 H. 6.
3.
E. 34 H.
6. 41.

619. But when lessee for life of land granteth his estate unto him in the reversion, and unto two others, he alone hath not interest, and estate in the freehold; but he hath a joint estate with others in the freehold; so that if they survive they shall have the whole freehold by the survivorship: And also he in the reversion had nothing in the freehold * before the grant; and it is not impertinent but that he in the reversion may take livery of seisin and estate in the same freehold for the advantage of another person. And if lessee for life be

• [268]

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he the remainder for life, and the lessee for H. 50 E.
 life doth commit waste, this waste is dispensa- 3. 3.
 ble at this time for the advantage of him in
 the remainder for life, &c. See other rea-
 sons concerning this matter in the Chapter
 of GRANTS, &c.

620. If lessee for life grant his estate unto
 him in the reversion, the remainder unto a
 stranger in fee, it seemeth the remainder is
 void; because that when he in the reversion M. 7 H. 6.
 alone is to take the whole, and all the estate 4-
 which was out of him, and no more, and he
 hath the reversion in his own right, it shall
 be hard that he shall take by livery of seisin:
 And so it seemeth, that the grant shall enure
 by way of surrender, and that the remainder
 is void, *tamen quare*; because that the livery
 of seisin is made upon the whole deed; and
 by the same deed the remainder is granted
 unto the stranger; and so it is unto the profit
 and benefit of the stranger, &c. But if lessee
 for life of land lease the same land unto him
 in the reversion for life, the remainder unto
 a stranger in fee, the same is no surrender; M. 39 E. 3.
causa patet. 29.

621. If there be lessee for life of land, the
 remainder in tail unto a stranger, the remain- M. 41 E. 3.
 der over in tail unto another * man, the re- 29.
 mainder unto the right heirs of the lessee, and 41 Aff. pl.
 the lessee doth thereof enfeof him in the first
 remainder in tail, and his wife in fee, and the 2.
 husband dieth without issue, living the lessee, * [269]
 and he in the second remainder doth enter
 and put out the wife, she shall have an assise;
 because she shall have the land during the life

of

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of the lessee who was her feoffor; *tamen quæritur*. And if he in the second remainder in tail, dieth without issue, living the wife, then he shall retain the land unto him, and his heirs for ever, &c.

622. If a sole woman seised of land in fee leaseth the same unto a stranger for life, and taketh a husband, and the lessee doth grant his estate unto the husband, this is no surrender: And yet the husband is seised of the reversion in fee; which is immediate unto the estate of the lessee, *viz.* in the right of his wife, and not in his own right, &c.

21 H. 7. : 623. If lessee for life be of land, the re-
 14. version unto two coparceners, and one of them
 E. 45 E. 3. taketh a husband, and the lessee granteth his
 13. estate unto her and her husband, this is no
 surrender: But if tenant in dower be of lands,
 and she grant her estate unto him in the re-
 version reserving rent, and the grantee taketh
 a wife, and dieth, his wife shall have dower;
 which proveth that the grant doth enure by
 way of surrender; and yet the reservation
 * [270] shall be good if it be * by deed indented, to
 take effect by way of grant, &c. But the
 tenant in dower shall not distrain for the rent,
 because she had no reversion; and no clause
 of distress is in the deed: And she shall not
 have an action of debt, because she hath an
 estate of freehold in the rent; but she shall
 have the same as a rent-seck. More shall be
 said of this in the Chapter of RESERVA-
 TIONS.

H. 7 E. 4. 624. And it is to know, that a surrender
 34. of a freehold made by deed indented upon
 condition

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condition is good; and if the surrender be of an estate for years in land, then the surrender may be upon condition without deed: And if a surrender be made of the freehold by deed indented, upon condition, that if he to whom the surrender is made, do not go unto York within one month next following the date of the surrender, that then it shall be lawful for him who made the surrender to re-enter into the land, the same is a good surrender upon condition.

CHAP. X. *

* [271]

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625. **N**OW is to speak of reservations, *Inst.* 142. And as to that, know, that there be are many words by which a man *T. 24 E.* may reserve unto himself that which was not in him before, and abridge the tenure of that which was in him before, viz. *tenendum, reservandum, reddendum, solvendum, faciendum*, and other the like. And there are divers words by which a man cannot properly reserve any thing, but those which were in him before, viz. *exceptis, reservatis, præter, salvo*, and other the like, &c.

626. And therefore, if a man be seised in *M. 21 E.* fee, of one acre of land, he may let the same 3. 49. acre for life, to hold of him by fealty and ten

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shillings

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shillings rent; and if the fealty or the rent be behind, he may distrain; and yet the same was *in esse* before. See the reason thereof in the book of Mr. *Littleton*, in the Chapter of RENTS; and see there many good cases concerning Reservations. And it is to know, that a reservation ought to be out of such a thing unto which a man may resort for to take a distress, as out of land, or a house; and not out of a rent, &c. if not that the reservation be made by our sovereign * lord the King, of whose title I will not speak.

H. 44 E. 3.

45.

1 Inst. 142.

a.

* [272]

1 H. 4.

627. But if there be lord, mesne, and tenant, and the mesne giveth the menalty in tail, reserving fealty and rent, this is a good reservation; because the tenancy may come unto the donee: But the donor nor his heir shall not distrain for the fealty, nor the rent, notwithstanding that they be behind, before the tenancy be come unto the donee; and then he shall distrain for all the arrearages from the time of the gift, and the donee shall not avoid the same.

T. 12 E.

4. 11.

M. 8 E. 4.

8.

628. If there be lord and tenant by fealty, and two-pence, and the lord release or confirm the estate of the tenant, to hold of him by one-penny, the same is good; and yet he held of the lord by this one-penny, and more before, &c. And if a man seised of land, doth give the same in tail, reserving twelve-pence, the same is a good reservation, by the word *reservandum*.

629. If there be lord and tenant by fealty and twelve-pence, and the lord doth release all his right unto the tenant, or confirmeth the

the

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the estate of the tenant, reserving unto him one-penny, it is good; yet it was *in esse* before, &c. And if the husband and wife grant, T. 44 E. and render a manor for term of life by fine, 3. 22. rendering the first year one-penny, and for six years then next following, every year a rose at the feast of *Easter*; and after the six years, every year ten pounds in money with clause * of distress, this fine shall be received; * [271] but a fine with clause of re-entry shall not be received; because, that then the estate should be defeasible, which is against the nature of a fine, &c. for *finis finem litibus imponit*, &c.

630. If a man seised of land, leaseeth the M. 13 E. same for life, rendring for the first six years 3. three quarters of wheat; and if he hold over Exec. 6. &c. yielding 5*l.* by the year, this is a good reservation, by this word *reddendum*, &c.

631. If there be lord and tenant by knights service, and twenty shillings rent, and the lord confirm the estate of the tenant, rendring unto him only homage, fealty, and escuage, when it shall be assessed by parliament unto forty shillings, forty shillings, and when less, less, by this confirmation the twenty shillings rent is determined; and yet this word (*reddendum*) is more properly the word of the confirmer, than of the confirmer, &c.

632. And if a man seised of land, leaseeth the same for life, or giveth it in tail, *solvendum sibi & hered. suis annuatim* twenty-pence, it is a good reservation. And if there be lord and tenant by fealty and twelve-pence,

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and the lord do confirm the estate of the tenant, *ad solvendum sibi* one penny, the same is good. And if a man seised of land, lease the same for life, or giveth the same in tail unto a stranger, *pro homagio suo faciendo*, it is a good reservation, &c.

- * [272] 633. If there be lord and tenant by * fealty and twelve pence; and the lord doth confirm the estate of the tenant *ad faciendum sibi fidem tantum*, it is a good confirmation, and by the same the rent shall be determined, &c.
- 12 H. 3. M. 13 R. 2. And it is to know, that every thing which
Avow. 89. is reserved by any of the words aforesaid,
E. 49 E. ought to be within the purport of the same
3. 10. words; otherwise the reservation is not good, if not that it be in special cases, &c.

634. If there be lord and tenant by knights service, and the tenant giveth the tenancy in tail *faciendum forinsecum servitium quantum ad eandem terram pertinet*, by these words the donee shall hold of the donor by knights service, &c.
- 1 Inst. 74: b.

635. If there be lord and tenant by knights service, and the tenant before the statute of Westminster 3. called *Quia emptores terrarum*, lev a fine of the tenancy upon a grant, and render unto C. D. *reddendum inde ad festum Nativitat. Sancti Johannis Baptiste annuatim id. pro omnibus servitiis secularibus & de mandis, Et faciendum capitalibus Dominis feod illius prædicti*. the tenant who levieth the fine *Harred. & assign. suis omnia servitia debita & consueta*. In this case, the donee holdeth of the donor by knights service, notwithstanding that he doth express that he shall do the
- M. 2 E. 3. 33.

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the services *Capitalibus Domini*; for by these words on this case, he shall not hold *De Capitali Dom.* because there is a tenure before * expressed in the fine, viz. by these words, * [273]
Roddendum inde annuatim ad festum, &c. which words make a tenure of the conuſor; so that if he shall hold *De Capitali Dom.* then he should hold the land of two ſeſſeral lords; the which the law will not ſuffer in this caſe. But if theſe words were not in the note of the fine, viz. *Roddendum inde ad festum Sancti Johannis Baptiste annuatim i d. pro annis ſecularibus & demandis*; then by the other words the conuſee ought to hold of the lord *perannuam* by the like ſer- ^{Inst. 152.} ^{b.} vices, as the conuſor held, &c.

§ 36. Two jointenants of land, or houſes, &c. by ſpecial means may hold by ſeſſeral ſervices. As put the caſe: There be lord and two jointenants of two acres of land by ſealty and twelve-pence, and one of them at this day doth enſcoff a ſtranger of that which doth belong unto him, upon condition: In this caſe, the ſeoffice ſhall hold of the lord by ſealty and twelve-pence; and if the lord grant unto a ſtranger the ſervice of the ſeoffice, and the ſeoffice doth attorn, and afterwards the condition be broken, and the ſeoffor entreat, in this caſe the ſeoffor, and the other jointenants, are jointenants as they were before the ſeoffment made; and yet they hold by ſeſſeral ſervices, and of ſeſſeral lords, but not the ſame land; for one jointenant holdeth one moiety of one lord, the other moiety of the

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644. If a man hath a rent-charge in fee issuing out of land, and by fine he doth release unto the tenant of the land, all the right which he hath unto the land, *reservatis, exceptis, & præter*, the rent, it is a void exception. And so it is of a grant, confirmation, &c. *mutatis mutandis, &c.* And if a man sell a wood, except twenty-oaks, and sheweth which in certain, it is a good exception.

18 E. 3.
Fines 4.

645. And it is to know, that this word (*salvo*) shall be a good exception of such things which are in the possession of the feoffor, donor, &c. at the time of the feoffment, gift, &c. and also this word (*salvo*) giveth a new thing unto the feoffor or donor which was not in him before, &c.

34 Aff. pl.
5 r.

646. If a man be seised of a water in which he hath a fishing, from the town of *Dale* in the county of *Middlesex*, unto the town of *Sale* in the same county, and upon the same water he hath a mill, and he doth grant unto a stranger *Totam partem piscariæ suæ de D. quam procul terr. inde extendat, ita quod nec ipse, nec hæredes sui, nec molendinarii de cætero cum rotibus nec aliis ingen. piscar. salvo tamen stagno molendini*, this exception shall not put off the grantee of the *piscarie* in the same pool; and this * (*salvo*) shall have relation, only for the repairing of the mill, and to do such things as are necessary unto the mill, &c. But if I grant common unto a stranger, for all manner of cattle within my manor of *Dale*, saving in one

* [277]

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one acre, and name the acre, the grantee shall have common in that acre, &c.

647. If there be lord and tenant by fealty T. 12 E. and twelve-pence rent, and the lord doth 4. 11. release all his right unto the tenant, saving to him his rent, it is a good reservation; and 29 Aff. pl. the lord shall have the rent in the same nature as he had it before. 20.

648. If there be lord and tenant by knights service, viz. by homage, fealty, and escuage, 29 Aff. 20. and twelve-pence rent, and the lord doth grant the rent unto a stranger, saving unto him his seignory, it is a good saving: But notwithstanding that the lord shall have the M. 2 H. escuage; and yet it is not but a payment of 3. 89. money if the tenant will; and the grantee shall have the twelve-pence rent as a rent-fee, &c.

649. If a man hath a parsonage, and a vicarage unto the same Church, and of one advowson; and by fine he granteth unto a stranger the advowson of the same Church, saving unto the grantor and his heirs, the presentation unto the vicarage; it is a good saving, &c.

650. If there be lord and tenant by knights service, and the tenant doth give the tenancy in tail to hold of him by * one penny for all * [278] services *salvo firinfeco servitio*; in this case, this *salvo* shall make the donee to hold of the donor by knights service, and yet the same was not in the donor before, but the donor was chargeable with knights service for the 31 Aff. pl. same land, unto him of whom he held it. 30.

Firinfecum servitium is such service by which 26 Aff. pl. the 66.

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27 Aff. pl. the donor held the same land which he gave,
52. &c. See divers good cases concerning reservation of Deeds in the Chapters of DEEDS, and CONDITIONS, &c.

651. Now is to shew, what persons may by their reservations make a tenure. And unto what persons they may make such tenure, and then what things may be reserved to make a tenure; and when the heirs of him unto whom the reservation is made shall have the things reserved. And then something shall be said when the reservation of collateral things, which cannot make a tenure shall be good, and when not, &c. And it is to know, that before the statute of *Quia emptores terrarum*, that he who made an estate unto another in lands, or houses, might make a reservation upon the same estate, according unto the interest which he departed with, if not that it were in special cases, &c.

652. And therefore, if before the statute of *Quia emptores terrarum*, there were two jointenants of lands, or houses in fee which
* [279.] they held by fealty and two shillings * rent,
T. 5 E. 4. or by fealty and a horse, and they enfeoff a
4. stranger of the lands or houses, to hold of one of them by fealty and twelve-pence, the feoffee shall hold the moiety of him by fealty and twelve-pence, because by the feoffment he did depart but with a moiety in right; and yet he shall have the whole rent which is reserved, notwithstanding that it be a severable rent, because it is reserved only to him, and he may well reserve the same unto him alone, notwithstanding that he joined in feoffment
ment

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ment with his companion, &c. And the feoffee shall hold the other moiety of the other jointenant, to whom the reservation was not made by fealty and twelve pence rent; and he and his companion shall hold together the whole land over by two shillings, because that then the rent is severable; and if they themselves hold the same land over by a horse, then it is said, that the feoffee shall hold the moiety of him by fealty and a horse, *tamen quare*; because he was party unto the reservation made unto his companion, &c. But if the jointenants had enfeoffed a stranger to hold of both of them, or of one of them, and expressed no services, they are void words, and the feoffee shall hold of them, as they held over.

653. If two jointenants were of land, and before the statute of *Quia emptores terrarum*, one of them doth enfeoff a stranger of what thereof belongeth unto him without reserving any thing, the * feoffee shall hold of his feoffor by the moiety of the services by which the feoffor and his joint companion held over, if they hold over by several services, &c. And notwithstanding this feoffment, the feoffor, and he who was his joint companion shall hold the same land over of their lord as they held before, so as the avowry of the lord is not altered by this feoffment. And also the feoffor shall not distrain the cattle of him who was his joint companion, because he hath an interest in the land by a more ancient title than his feignory began, &c.

[18.] *

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554. If before the statute of *Quia emptores terrarum*, there had been lord, mesne, and tenant, and the mesne and the tenant had intermarried, the same should not have altered the lord's avowry; or if the tenant had enfeoffed the mesne of the tenancy, it should not have altered the avowry of the lord, &c.

655. If lord, two jointenants mesne, and tenant had been, and every of them held of the other by fealty and twelve-pence, and the tenant had enfeoffed one of the jointenants mesne, before the statute of *Quia emptores terrarum*, of the whole tenancy, it seemeth the feoffee shall hold one moiety of the tenancy of him, who was his jointenant mesne by fealty, and six-pence rent: For inasmuch as his joint mesne might have granted what belongeth unto him of the mesnalty unto a stranger, and his grant should have been good * with attornment of the tenant, notwithstanding that it were but by matter of writing; and if it were by matter of record, it should be good without attornment of the tenant, &c. And if the mesne who made the feoffment, before the feoffment had released all his right in the tenancy unto the tenant, by this release the moiety of the mesnalty had been extinguished, and no more. So that notwithstanding this release, his joint mesne may avow upon the tenant for the moiety of the mesnalty, viz. for fealty and six-pence; so that it appeareth that by the feoffment made unto one mesne, there is but a moiety of the mesnalty extinct, viz.

T. 5 E. 3.
31.

• [281]

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viz. the moiety which in right doth belong unto the feoffee, and no more, &c. So as for one moiety of the tenancy, there are lord, mesne, and tenant; and for the other moiety of the tenancy, lord and tenant.

656. If before the statute of *Quia emptores terrarum*, there had been father, and two daughters, and the father being seised of one acre of land, enfeoffe thereof his eldest daughter to hold of him, and his heir by fealty and twelve-pence, and the father dieth, and the seignory descendeth unto the two daughters; now the eldest daughter shall hold of her younger sister by fealty and six-pence. But if the eldest daughter being seised of one acre of land before the statute of *Quia emptores terrarum*, had thereof enfeoffed her * father, * [282] to hold of her and her heirs by fealty and six-pence, and the father thereof die seised, and the two daughters enter into the same acre as daughters, and one heir unto their father; in this case the eldest daughter shall not distrain for any rent, during the time set in possession in common with her sister, but after proclamation is made between her and her sister, her sister shall hold her part of her by fealty and three-pence, &c. 33 Ass. pl. 15.

657. If before the statute of *Quia emptores terrarum*, lord and tenant had been of a corn of land by knights service, and the tenant had been disseised of the land, and the uncle of the tenant had released all his right, which he had in the moiety of the tenancy unto the disseisor, and by the same deed of release had bound him and his heirs, to warrant the same moiety

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moiety unto the disseisee and his heirs, and the uncle dieth without issue, and the warranty descendeth upon the disseisee; and the disseisee taketh a wife, and hath issue a son; and the disseisor enfeoffeth the son of the tenancy, to hold of him by knights service, and afterwards the father dieth; now the son is remitted unto the moiety of the tenancy, and shall hold the same moiety by priority, &c. and the other moiety he shall hold by posteriority, &c.

E. 10 E. 4. 658. If before the statute of *Quia emptores terrarum*, a man being seised of one * acre
4. * [283] of land leaseth the same acre unto a stranger for life, and afterwards granteth the reversion in fee unto another stranger, to hold of him and his heirs by knights service; this is a good tenure, but the grantor shall not distrain for the services during the life of the lessee, &c.

659. And if before the statute of *Quia emptores terrarum*, a man seised of one acre of land leaseth the same acre for life, and afterwards releaseth all his right in the same acre of land unto the lessee, to have and to hold unto him and his heirs, &c. or confirmeth the estate of the lessee, to have and hold the same acre to him and his heirs, to hold of him by knights service, the releasor may distrain for such services, or any of them in the land whereof the lease, release, or confirmation was made as often as the same shall be behind; &c.

660. If a man seised of land in fee in the right of his wife, and before the statute of
Quia

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Quia emptores terrarum, the husband alone thereof doth enfeoff a stranger without saying more, the feoffee shall hold of the husband by such services, as the husband and his wife held over, for the husband alone ~~and not~~ hold over. But if the husband and wife had joined in the feoffment to hold of the husband, these words (to hold of the husband) are void. And the feoffee shall hold of the husband and wife by such services * as they * [284] held over, inasmuch, that if the husband dieth, and the wife after the death of her husband accept of the services from the feoffee, she shall not avoid the feoffment in a *cui in vita*. And if the husband and wife have joined in the feoffment to hold of the wife without more saying, the feoffee shall hold of the husband and wife, inasmuch that if the wife die, the feoffee shall hold of the husband until the feoffment be avoided by the heir of the wife in a *cui in vita*; &c. and then the heir shall hold of the lord paramount.

661. If before the statute of *Quia emptores terrarum*, two coparceners were of a corn of land in fee, and one of them release all his right, &c. unto his companion, reserving rent, it is a good reservation, because the releasee is in the part of his releasor, *in le Per* by force of the release.

662. But if two jointenants were of a corn of land in fee, and before the statute of *Quia emptores*, &c. one of them release all his right in the land unto his companion, reserving rent, the same is a void reservation.

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to make a tenure. But if perhaps such release were by deed indented, and words of grant of release, &c. were comprised within the release, or only words of reservation without words of grant, then the lessor shall have the rent reserved as a rent-seck; and if the reservation were with * words of distress; then the releasor shall have it as a rent-charge.

* [285.]

663. If lord and tenant are in fee by fealty and twelve-pence, and before the statute, &c. the lord release unto the tenant all his right in the tenancy, to hold of him by twenty-pence, it is a void tenure, because that he departed with no estate executed, nor to be executed hereafter by the release upon which he created the tenure.

M. 17 E. 3.

69.

1 Inst. 143.

b.

664. If before the statute of *Quia emptores*, &c. a man seised of land in fee doth thereof enfeoff a stranger to hold of him and his wife by twenty-pence, it is a void tenure as unto the wife, and it is a good tenure for the whole rent as to himself, &c. And it is said, the reason is, because the wife is a stranger unto the feoffment. But notwithstanding that the wife were a party to the feoffment, &c. if she had nothing in the land whereof the feoffment was made at the time of the feoffment, yet the tenure is void as unto the wife, if it were not by fine, because she departeth with no possession nor estate, &c. but it shall be all the feoffment of the husband. But if the tenure be by fine, then it shall be good unto the wife by way of conclusion, &c.

M. 11 H.

4. 1.

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665. If a man seised of land, and before the statute, &c. do thereof enfeof a stranger, to do homage and fealty unto another stranger, it is nothing worth, for service cannot be done unto any other then the lord. And yet the steward * or other servant of the lord * [286] may receive fealty for the lord, &c. But the fealty is made unto the lord, notwithstanding that he be not present. H. 21 E. 4. 34. H. 32 H. 6.

666. But if before the statute, &c. a man being seised of land in fee do thereof enfeof a stranger, to be butler unto another stranger, or to pay unto a stranger ten shillings yearly at the feast of *Easter*; or to cover the house of another stranger, this is no tenure in him whose house shall be covered, or, &c. nor hath he any remedy if the feoffee do not do the same, but the feoffee holdeth of the feoffor, and if in such case the rent be not paid, &c. the feoffor may distrain, &c. 27.

667. If there were lord, mesne, and tenant, and before the statute, the tenant doth enfeof a stranger of the tenancy to hold of the Lord *paramount*, the same is void: But if the feoffment were made to hold of the mesne, it were good, and he shall hold of him by the same services by which the feoffor held of the mesne; but the tenant may make a new tenure between the mesne and his feoffee by new services, for to the services reserved the mesne is a stranger. And if the tenant had enfeofed a stranger before the statute, &c. to hold of him and the mesne, the feoffee should have holden only of his feoffor. T. 7 E. 4. 11. H. 2 E. 4. 5.

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668. And if the tenant before the statute had enfeoffed *J. S.* to hold of the mesne, and
 * [287] *T. K.* the feoffee should have * holden only of the mesne. If there had been a woman seignorels before the statute, and tenant; and the woman had taken husband; and the tenant enfeoffeth a stranger, to hold of the husband, it is a void tenure, and the feoffee shall hold of his feoffor, &c. And if there had been two joint seignors and tenant; and before the statute the tenant had enfeoffed a stranger to hold of him, and one of the joint lords, it is a void tenure, and the feoffee should hold of his feoffor.

669. If lord and tenant had been before the statute, &c. and the lord grant his seignory unto a stranger, and the tenant enfeoffed another stranger, to hold of the grantee of the lord, the same had amounted unto an attornment, and also to make a new tenure; and yet the grantee is a stranger unto the reservation of the seignory between the grantor and the tenant. But as to that it may be said, that there is a privity by matter *in fact*, viz. by the grant with the attornment, and so shall be notwithstanding that the lord had granted the same unto the use of the grantor, &c. And the same law is where a mesnalty doth escheat; *mutatis mutandis*. And if there had been lord and two jointenants before the statute, &c. and they had enfeoffed a stranger, and one of them had assigned the feoffee to hold of the lord *par-*
 * [288] *mount*, and the other had assigned the * feoffee to

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to hold of himself, &c. the same had been good, &c.

670. If lord and tenant have been before the statute, of two acres of land, and the tenant do thereof enfeof a stranger, to hold one acre of the lord *paramount*, and to hold the other acre of him; the same is good, &c. And it is to know, that the beginning of a manor was, when the king gave a thousand acres of lands, or a greater or lesser parcel of land unto one of his subjects, and his heirs, to hold of him and his heirs, which tenure is knights service at the death. And the donee did perhaps build a mansion-house upon parcel of the same land, and of twenty acres, parcel of that which remained, or of a greater or lesser parcel before the statute of *Quia emptores*, &c. did enfeof a stranger, to hold of him, and his heirs, as of the same mansion-house, to plow ten acres of arable land, parcel of that which remained in his possession, and did enfeof another of another parcel, &c. to carry his dung unto the land, &c. and did enfeof another of another parcel thereof, &c. to go with him to war against the Scots, &c. and so by continuance of time he made a manor; &c.

671. And if a man be seised of the manor of *Dale* in fee, and another man held of him as of his manor of *Dale*, to cover the hall, or other house of the * same manor, if the * [289] house fall and be not re-edified by the space of seven years, or for a greater or lesser time, now for this time the tenant which held by such service is discharged: But when such house

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house is re-edified, the tenant is bound to do the service, if it be not rebuilt longer or larger, so as it shall be more chargeable unto the tenant, for to cover the house now, than it was at the time the tenure was created. And if the house be in such manner re-edified, *quere*, if the tenant shall be bounden to cover so much thereof as shall amount unto the length and breadth what it was when the tenure was created. And if such a house be

H. 33 H. thrown down by the Turks, enemies unto
6. 1. the king, who enter into the realm with a great army, for to conquer the same, the law is as before is said; *mutatis mutandis*, &c.

E. 2 H. 4. 672. But if such a house be pulled down
48. by neighbour, or by other men; or if such a house be burned by negligent keeping of the neighbour's fire, in such case he is not bounden to cover the same when it is builded again, for the lord shall recover damages for the same house, unto the value of the house,

T. 28 H. 6. as it was at the time of the burning; or at
7. the time of the pulling down thereof, so that the tenant is not more bound to make another covering to the same house, than he is to make unto another house burnt or pulled down;

* [290] for if he should be otherwise bounden, then the lord should have double satisfaction for the same thing, &c. *Quere*, If such a

4 Co. 87. house fall by the negligence of the lord him-
b. self, or with his will, and afterwards be re-edified, whether, and how, the tenant shall be bounden to cover the same house, &c.

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673. If a man be seised of the manor of *Dale* in fee, and a stranger holdeth of him as of his manor of *Dale*, to cover the kitchen of the same manor, or other house, or else he holdeth of him as of the same manor to scour a ditch of the same manor; or if he hold of him as of the same manor by knights service, or in socage, in such case, if before the statute, *Ec.* a stranger be enfeoffed of the manor, and the tenants atorn unto him, he may avow for all such services: But for such services, *viz.* for the scouring of a ditch, or for the covering of a house, notwithstanding that he be seised of them, and he distrain for them, and reservations be made, he shall not have an assise, because they lie only in frustration, but he may have of them a *procepe quod faciat*, &c.

674. And if before the said statute, lord and tenant have been of two acres of land by fealty and twelve-pence rent, and the tenant had enfeoffed a stranger of one acre, or M. 12 E. of a greater or lesser part of the tenancy, it was at the liberty of the lord in what parcel he would distrain for the whole rent; for by such seffment * made unto a stranger, the rent was not apportionable by the common law, notwithstanding that the feoffee held of his feoffor: But now by the statute, the feoffee shall hold *pro particularibus* of the lord of the feoffor. [291]

675. But if the tenant leaseth parcel of the same for years, or for life, or giveth parcel of the tenancy in frankmarriage; or in tail, in that case, the lord paramount may distrain

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fall, or is burnt, yet the rent remaineth, and the lord may distrain for the same upon the land, where the house stood, &c.

682: And perhaps a rent shall be apportioned for a time; as perhaps there be lord and a woman tenant by rent severable, and the woman taketh a husband, and the husband doth distrain parcel of the tenancy in severalty in fee, and the rent is apportioned, and the husband dieth, and the wife doth recontinue this parcel, which was discontinued by her husband in a *cui in vita* brought against the feoffee, now this apportionment is defeated and determined, &c. The same law is of a feoffment of parcel of the tenancy made upon condition, &c. *mutatis mutandis*, &c.

* [294] 683. So shall it be if parcel of the * tenancy in severalty be recovered by erroneous processes, or by false verdict, or upon a false title, &c. and afterwards is recontinued, &c. the statute saith, that the feoffee shall hold now of the lord; and if it be of part, then of that part, *Et decidat Capitali Domino ipsa pars servitii*, &c.

M. 22 E. 3-36. 684. If there be lord and tenant of three acres of land by homage, fealty, suit of court, escuage, and the rent of a horse payable at the feast of *Easter*, or by the rent of a hawk, or of a rose, &c. And the tenant after the statute doth enfeoff one man of one acre parcel of the tenancy, and doth enfeoff another man of another acre parcel of the tenancy, in this case, every of them shall hold of the lord, by homage, fealty, and suit; but the
escuage

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escuage shall be apportioned, and the relief when it falleth as a rent severable, shall be apportioned, and the lord shall have but one horse, or one rose, or one hawk of them all not apportionable: And he shall make one avowry upon them all for such entire rent, although that the lands be severable, as he may make at the common law for such entire rent; &c. And notwithstanding that by the said statute the feoffee of parcel of the tenancy in severalty, shall hold of the lord, *pro particula illa*, yet before the lord is bounden to avow upon him, he ought to give notice unto the lord; and yet in right he holdeth of the lord immediately; * and the lord shall * [295] have ward or relief, or a *cessavit*, or assise of the rent before notice given unto him; but the feoffee shall not have acquittal before notice, &c. the notice ought to be given in this manner, *viz.* to shew the feoffment unto the lord, and if the tenure be by homage, to tender unto him homage and fealty, and all the arrearages of the rent; or otherwise the lord is not bounden to take the notice; for the feoffor shall not be discharged before the arrearages paid; and the feoffee of parcel ought to tender all the arrearages, &c. And if there be two joint feoffees, it behoveth them to give their notice jointly. An infant, who is a feoffee, shall give notice; and an infant who is lord shall take notice, &c.

685. And the husband who is seised of a feignory, in the right of his wife, if the tenure be by homage, he and his wife shall take the notice: But if the tenure be but by

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fealty

H. 7 E.

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T. 47 E.

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fealty and rent; the husband alone may take the notice: But if a sole woman be enfeofed of parcel of the tenancy, and before notice she taketh a husband, in such case, the husband and the wife ought to give the notice jointly. And an Abbot who is feoffee of a tenancy shall give notice, &c. But he who hath the whole tenancy, or parcel of the same in severalty, by matter of record, as by recovery, or by fine, shall not give notice, &c. For the lord is bound to take notice thereof, &c.

M. 35 H.
6. 10.

* [296]

* 686. But if a fine be levied *sur consens de droit* of a tenancy, and the consor be in possession of the tenancy, it is at the liberty of the lord, whom he will take for his tenant before the consor enter, &c. But it is to know, if at this day a tenure shall be made by void reservation, it behoveth, that the reversion of the same thing, out of which the reservation is made, and of the estate which is made, remain in him which maketh the reservation, if not that it be in special cases, &c.

687. And therefore, if there be two joint tenants of land, to have and to hold the same land unto them, and unto the heirs of one of them, and they join in a gift in tail unto a stranger, reserving rent unto him who had but an estate for life, this reservation is void to make a tenure. For notwithstanding that if the donee in tail dieth, without issue during his life, and the life of his joint donor, that then he shall have the land again; yet that doth not prove that any reversion

H. 38 E.
3. 7.

RESERVATIONS.

reversion of the same land after the gift made, remaineth in him who had but an estate for life at the time of the gift: For if at this day a man seised of land do enfeoff thereof a stranger by deed indented, reserving unto him, and unto his heirs, ten shillings rent, payable, &c. upon condition, that if the feoffor pay unto the feoffee ten pounds, &c. that then it shall be lawful unto the feoffor and his heirs to re-enter. In this case, the feoffor may have again the land; and yet the reservation is void to make a tenure, &c. [297]

688. But because it is by deed indented, the feoffor shall have the rent reserved as a rent-seck; and to this purpose it shall take effect in the feoffor as a grantee of the feoffee, inasmuch as if it be reserved with clause of distress, the feoffor shall have it as a rent charge. So it appeareth, that when two jointenants of land, and unto the heirs of one of them, join in an estate in tail, that nothing of the reversion of the same land doth remain in him who had but an estate for life, &c. And yet if lessee for life be of land, and he maketh a gift thereof in tail unto a stranger, reserving rent, &c. that this reservation maketh a tenure betwixt him and the donee, &c. as long as the gift continues in force; because that by the gift he hath gained unto himself a reversion in fee, in the same land whereof the gift was made, &c.

689. But put the case: If two or three jointenants are of land, to have and to hold unto the heirs of one of them, and they join

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in a gift in tail, without saying more, the donee shall hold of them by the like services, as they hold over : But if they have reserved new services unto them all upon the gift, *quære* how the same shall enure, &c.

- [298] 690. If there be disseisor, and disseisee * of any acre of land, and they both enter into the same acre, and deliver an estate thereof unto a stranger in tail, to hold of the disseisee, and his heirs by homage, fealty, and escuage, this is a good tenure ; because the disseisee is the donor, and the reversion doth remain in him ; because he was remitted before the livery of seisin made unto the donee in tail, &c. But if they had given it in tail to hold of the disseisor, it is a void tenure ; and then the donee shall hold of the disseisee by the like services as he held over ; *causa patet*.

691. If a man seised of one acre of land in fee, leaseth the same unto a stranger for years, and the lessor and lessee join in a gift in tail unto a stranger, reserving 10 s. unto the lessor, the same is a good tenure : But if lessee for life of one acre of land join in a gift in tail of the same acre with his lessor unto a stranger by deed, containing words of confirmation to hold of the lessor by ten
M. 5. H. shillings rent, *quære* thereof, if *cestuy que use*
7. 5. of lands entreth upon the feoffees, and leaseth
H. 8 H. the same land unto a stranger for life, accord-
7. 5. ing unto the statute of 1 R. 3. reserving ten
T. 12 H. shillings rent, the same is a void reservation
7. 25. to make a tenure ; for the reversion of the
T. 27 H. same land is not in the lessor, but it is in the
8. 13. feoffees,

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feoffees, and they are strangers unto the lease, and the reservation, &c. But if such lease, and reservation be by deed indented, then * the lessor shall have the rent, as a * [299] rent-seck.

692. If *cestuy que use*, hath leased the land in use for term of years, reserving rent, &c. by word; in such case, the lessor shall not distrain for the rent reserved, because no reversion doth remain in him, &c. But it is said, that he may have an action of debt for the rent against the lessee, because it is but as a contract. As if a man sell lands or tenements for money by word, he may have an action of debt for the money, &c. And it hath been holden, that in such case, the lessor shall not have an action of debt for the rent reserved, unless it be by deed indented: And the reason as it seemeth is, because it cannot be taken as a contract, because it is by reservation: And then if the lessor take advantage thereof, it behoveth him to have it as a rent-seck; and then it ought to take effect in the lessor, as a grant of the lessee; and rent cannot take effect in any person by way of grant by word, if not that it be in case of partition, &c. and other special cases, &c. *tamen quære*, for such leases are commonly made with reservations by *cestuy que use*, by word, &c.

693. If there be lessee for twenty years of lands or tenements, and he granteth the same lands or tenements unto a stranger for parcel of the years, reserving unto him twenty shillings, &c. in this case, the grantor shall

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* [300] disfrain for the rent * reserved, or have an action of debt at his pleasure; and the reason is, because by common intendment he is to have the same land, after the years determined; because he hath granted unto him but parcel of the years, so as the remainder of the years are in him.

E. 10 E. 4. 694. If there be disseisor and disseisee of one acre of land, and the disseisee doth release all his right in the same acre unto the disseisor, to have and to hold the same acre unto him, and his heirs of his body, reserving unto him and his heirs ten shillings rent, payable, &c. it is a void reservation to make a tenure at this day; for notwithstanding that such release doth go by way of making of an estate, yet the fee of the land, which is in the disseisor, shall not be divested out of him by such release, if the release be not by deed indented; and if it be, then

3. *quere* thereof. For then it seemeth that the releasor shall have the reversion of the fee by conclusion. Yet if there be two joint disseisors, and the disseisee doth release unto one of them, he shall hold out his companion, &c.

M. 7 E. 4. 25. 695. If there be lord and tenant of land by fealty and twelve-pence, and the tenant lease the tenancy unto a stranger for life, without any more saying, in this case, the lessee shall hold of his lessor by fealty only, and not by the services by which his lessor holdeth over: But if the lessor hath reserved

* [301] any service, or * rent upon the lease, he shall have the same: But if at this day nothing

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thing be reserved upon a gift in tail, the donee shall hold of the donor by such services as he holdeth over; as if a man seised of land in fee, leaseth the same land for life, reserving ten shillings, and the lessee giveth the same land unto a stranger in tail, and doth not reserve any thing upon the gift in tail, *quare* how the donee shall hold the same, &c.

696. Now is to shew, what things may be reserved for to make a tenure. And as to that, know, that all such things as lie in seignance, or in tenure, may be reserved for to make a tenure, for such things may be said rents or services. As if before the statute of *Quia emptores terrarum*, a man seised of land do enfeoff thereof a stranger, to hold of him and his heirs to scour the ditch of the feoffor, &c. or to cover his hall, or to repair his kitchen, or to give unto the feoffor and his heirs when he shall come unto his manor of *Dale*, a dinner; or to find a chaplain every *Friday* in the week yearly in his manor of *Dale*, &c. Or to give unto the feoffor ten shillings rent, or a horse, or grass, or arrows, or a spear, or a lance, or a cup of silver, or a pair of spurs, or a ring of gold or silver, &c. Or a quarter of wheat, or of barley, &c. Of all the things aforesaid a tenure may be made by way of reservation, or of all other things which be in seignance * * [302] or in render, a tenure may be made by reservation upon a feoffment, &c. And at this day a tenure may be by reservation of such things, upon a gift in tail, or upon a lease for life, &c.

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697. And it is to know, that when the law maketh the tenure or reservation, then the heirs of the feoffor, donor, or lessor shall have the services as well as the feoffor, donor, or lessor himself shall have them; but if the reservation of the service or rent, &c. be made by express words of the party, &c. then the heirs of the feoffor, donor, or lessor shall not have the services, and rent reserved, if not that it be reserved unto them by express words, &c.

M. 10 E. 4.
18.

698. And therefore, if before the statute of *Quia emptores terrarum*, there be lord and tenant of land and tenements by knights service, and the tenant doth enfeoff a stranger of the tenancy without reserving any thing, the feoffee and his heirs shall hold of the feoffor and his heirs by knights service, if the feoffor and his heirs hold over by the like services: But if the feoffor himself holdeth over by knights service during his life, and no longer, and that after his death his heirs shall hold by fealty only, or by other services; now the feoffee and his heirs shall hold of the feoffor and his heirs by the like services, *mutatis mutandis*; and so shall it be if the tenant at this day doth give the tenancy in * tail without reserving any thing; *mutatis mutandis*, &c.

* [303]

699. But if the feoffor, &c. or donor, &c. or lessor for life reserve unto him upon the feoffment before the said statute; or reserve unto him upon the gift or lease, after the said statute, knights service, or fealty and ten shillings, or a horse, &c. and dieth; his heir

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heir shall have only fealty, because the reservation doth not extend unto the heir of the feoffor, donor, or lessor. But if in the same case the feoffor, donor, or lessor grant his feignory or reversion, &c. and the tenant doth attorn unto the grantee, the grantee shall have all the services, and the rent reserved, &c. during the life of the grantor, &c.

700. And if a man seised of two acres, leaseth the same unto a stranger for life, yielding for one acre, and sheweth which acre in certain, ten shillings unto the lessor and his heirs, and yielding for the other acre ten shillings, &c. unto the lessor, and the lessor dieth, and the reversion of both acres do descend unto his heir, the heir shall not have the ten shillings last reserved unto the lessor, &c.

701. And if a man seised of land, after the statute of *Quia emptores terrarum*, giveth the same land unto a stranger *pro homagio & servitio suo*; to have and to hold the same acre unto him, and his heirs of his body begotten, in this case the issue of the donee shall do fealty only unto the donor and his heirs; and the heirs of the donor shall have only fealty of the donee and his issue, &c.

702. And it is to know, that a reservation of things which lie only in prebend or usage, cannot make a tenure. And therefore, if a man seised of land and wood, before the statute of *Quia emptores terrarum*, doth thereof enfeoff a stranger, and after the said statute doth give the said land, and wood

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in tail, or leaseth the same for life unto a stranger, reserving unto the feoffor, donor, or lessor common for four beasts in the same land, and for to suffer the feoffor, donor, or lessor to take yearly in the same wood three loads of estovers for sewel; this reservation is void to make any tenure, and the reason why such things cannot be said a reservation is, because that the feoffor, donor, or lessor cannot take profit thereof but only by his own act, and a man cannot do service unto himself; and therefore such reservation is void, if it be not by deed indented, and then he shall take the same by way of grant of the feoffee, donee, or lessee.

703. And therefore, if a man seised of land do enfeoff a stranger thereof by deed indented, or giveth the same land in tail, or leaseth the same for life unto a stranger by deed indented, reserving common without number unto him and his heirs, this is a good grant in fee-simple if it be reserved upon a feoffment: But if it be reserved upon a gift in tail, then * it shall enure and take effect by way of grant of the donee, and shall be good and effectual during the life of the donee, and no longer, &c. The same law is, if it be reserved upon a lease for life by deed indented, &c.

704. And it is to know, that the donor, grantor or lessor, cannot reserve unto them a lesser estate in the same thing in which they depart withal by the gift, &c. than they had in the same at the time of the gift, &c. by
matter

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matter in deed or writing. *Quere*, if it be by writing indented, &c.

705. But if such reservation be by fine, it H. 42 E. 3. shall be good by way of conclusion, &c. 5. And therefore if a man seised of land in fee, giveth the same land in fee, or giveth the same land in tail unto a stranger, or leaseth the same land unto a stranger for life, the remainder thereof unto the donor or lessor for life, or in tail, the remainder over unto a stranger in fee: In this case, the remainder unto the donor or lessor is void, and yet the remainder over unto the stranger is good, &c. The same law shall be, if the donor or lessor had not had but an estate for years, or for life in the land given, or leased, &c. at the time of the gift or lease, with the remainder over, in manner and form as before is said, for when lessee for years or for life maketh such a gift or lease, &c. they which take by such gift or lease, cannot disable their donor or lessor to make such a gift or lease unto *them, and so it doth not lie in them to * [306]. plead that their donor, or lessor had not a fee at the time of the gift or lease made, &c. But notwithstanding such gift or lease made by lessee for years, or for life, he or they who hath or have right may avoid the same by entry, or by action, as their case is, &c.

706. If husband and wife, and a third person be jointenants of land, or tenements in fee, and lease the same lands and tenements by deed poll unto a stranger for life, saving the reversion unto them three, and unto the heirs of the husband, notwithstanding that

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the reservation shall be unto them all three jointly in fee. The same law is of things which lie in grant, *mutatis mutandis*, if not that it be in special cases; but if such reservations were made by fine, they were good enough, if not that it be in special cases, &c.

* [307]

C H A P. XI. *

C O N D I T I O N S.

Wood's
Conv. 283.

707. **N**OW is to speak of conditions. And first is to know that conditions may be annexed unto things inheritables, unto freeholds, and unto chattels reals and personals. Unto things inheritables and freeholds; as put case, a feoffment or a gift in tail, or a lease for life, or the life of another, be made of lands or tenements upon condition, or if a grant of a rent or common, &c. be made in fee tail, or for life, or for another's life upon condition, &c. Unto chattels real; as a man seised of land, leaseth the same land by indenture unto a stranger for the term of five years, upon condition, that if the lessee pay unto the lessor within the two first years ten marks, that then he shall have fee in the land let, or otherwise but an estate for five years, and livery of seisin is made according unto the deed, in this case it hath been holden,

H. 14 H. 3.
8.
1 Inst. 216.
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den, that the lessee hath a fee-simple conditional presently, which it cannot be, because that the words of the condition are *verba de futuro*, viz. that if he pay, &c. that then he shall have fee.

708. And therefore if a man seised of * * [308]
land in fee, doth lease the same unto a stran- M. 18 E. 3.
ger for years, upon condition, that if the 21.
lessee be ousted of the land within the term
by his lessor, that then he shall have fee, &c.
Now if the lessee within the term be put out
by a stranger, without the assent of the lessor,
the lessor shall have an assise of this
ouster, and not the lessee, for in such case
the freehold did not accrue unto the lessee,
but when the condition is performed, and at
all times before the condition performed, the
freehold doth remain in the lessor. And yet
if a man seised of land, doth lease the same
land unto a stranger for life, and doth grant
the remainder over of the same lands unto
the right heirs of J. S. which J. S. is then
alive, in that case the fee is in abeyance,
viz. in the consideration of the law, and is
in no person certain, and the reason is in that
case, because the remainder is granted by
words in the present tense, and also in this
case the freehold is not to be put in abeyance;
And in the principal case, if the freehold 24.
and the fee, &c. should not be in the lessor, H. 2 H. 7.
&c. until the condition be performed, then 3.
would it follow that the heir of a disseisor T. 12 H.
by his act shall put the disseisee unto his 7. 27.
action, and all other persons who have right
unto lands or tenements, by such means,
the

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the tenant of the freehold by his own act might put them unto their actions; for the writ of *Entre en le Per*, and such other actions * [309] ought to be brought and pursued against the tenant of the freehold, &c.

709. But if a Parson of a Church be seised of glebe-land in the right of his parsonage, or vicarage, unto which land a stranger hath right of action, and the parson or vicar dieth, in this time, during the time of the vacancy of the Church, he that hath right of action, shall use and follow his action, because that during the vacancy the freehold is no person, &c. The same law is, as it seemeth, if such a parson, or vicar, doth resign his benefice into the hands of the ordinary; in this case, during the time of the vacancy, he who hath right of action unto the glebe-land cannot commence his action, &c. and yet the Church doth become void by the act of the incumbent, &c. But that is a special case; and the same law shall be of the like special cases, &c.

H. 7 E. 3.
12.

710. If a man seised of land in fee, doth lease the same land by indenture unto a stranger, yielding five pounds by the year, and the indenture is, that if the lessee will hold over ten years to him and his heirs, that he shall pay twenty pounds by the year, and livery of seisin is made unto the lessee accordingly; in this case, for the rent behind within the ten years, the lessor shall have an action of debt; which proveth that the freehold and fees are not in the lessee before the ten years * [310] ended; but if when the ten years be * past and

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and ended, the lessee doth continue the possession of the same land, and doth occupy the land by force of the indenture, then he hath fee, and shall pay twenty pounds by the year as a rent-seck.

711. But if a man seised of lands, doth lease the same lands for life, yielding unto him a rose for the first six years, and if he will hold the land over the six years, that he shall pay three marks by the year; in this case the lessee hath the freehold presently, &c. And guardian in knights service may grant the wardship of the body and land, or any of them, upon condition. Tenant by statute merchant, and tenant by *elegit* may grant their estates, or parcel thereof, upon condition, &c.

712. And conditions may be annexed unto chattels personals. And therefore if a man selleth twenty oxen, or other chattels moveables or not moveables, upon condition, that if the seller go unto *Rome* within one year then next following, that the vendee shall pay unto him for the oxen, or other chattels twenty pounds; or otherwise that he shall pay unto him but forty shillings for the oxen, &c. this is good, &c. and the vendor shall not have the twenty pounds, &c. if he do not perform the condition, &c. And a man may bail goods upon condition, &c.

713. As if a man contract with a physician, or with a surgeon, that if he shall cure such a one, and name him certain, * of * [311] such a disease, and name the disease, that he shall have ten pounds, the same is a good contract

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contract conditional. If a man sell a house without the land upon which the house is built for twenty pounds, to be paid when the vendor hath removed the house unto such a place at his own costs, and name the place, *M. 44 E. 3.* &c. the vendor shall not have the money before that he hath removed the house according unto the condition, &c.
28.

714. And the retainer of a servant may be upon condition, &c. And know, that *Mr. Littleton* in his third book, Chapter of ESTATES, hath shewed, what conditions ought to be by deed, and what may be without deed, &c. And in the same Chapter he hath shewed divers and many other good and necessary cases concerning conditions, &c.

715. And it is to know, that charters concerning inheritances may be delivered upon condition without deed, and yet they are not chattels: The retainer of a servant according unto the statute of labourers upon condition is good without deed, &c. But a rent cannot be granted for years upon condition, without an indenture, if the grantor will take advantage of the condition, &c. The same law is of an advowson in gross, common in gross, and of the things which cannot pass without deed, &c.

716. It hath been holden, that if a man * [312] doth enfeoff a stranger of land, * and tene-
M. 6 H. ments, to reinfeoff him and his heirs, and
7. 8. the feoffor dieth, and his heir doth require
M. 4 E. 4. the feoffor for to reinfeoff him, and he refuseth,
34. for which the heir entreth, and the
M. 7 H. 6. feoffee doth bring an action of trespass, that
2- the

C O N D I T I O N S.

the heir shall plead this feoffment with the T. 44 E.
condition without shewing the deed thereof, 3. 22.
because it is in an action of trespass, in
which action freehold is to be recovered: But
the law is contrary at this day, for if in an
action of trespass for breaking of his close,
&c. the defendant plead, that the place where,
&c. was his freehold at the time. Now if
the plaintiff will conclude him so to plead,
by reason of the feoffment of the ancestor of
the defendant (whose heir he is) with war-
ranty, &c. and rely upon the warranty, it
behoveth him for to shew the deed thereof
notwithstanding that it be in an action of
trespass, &c. But in many cases, divers
persons unto whom a deed doth not apper-
tain shall take advantage of a condition, an-
nexed unto the freehold, and also of things
which lie in grant without shewing the deed:
And therefore a woman may demand her M. 3 H. 6.
dower of a rent-charge, or of a common in 21.
gross, which is certain, and without shewing M. 44 E.
the deed thereof, &c. 3. 27.

717. Now is to shew at what time con-
ditions ought to be annexed unto inheritances,
freeholds, or other things, to avoid and de-
feat the same. And as to that know, that
when a thing executed shall * be defeated, * [313]
and made void by a condition, it behoveth
that the condition be annexed unto the same
thing, at the time of the executing thereof,
otherwise, as unto that purpose, it is not any
thing worth. But it is otherwise of things
executory, if not that it be in special cases,
&c.

C O N D I T I O N S.

- 54 Aff. pl. 718. And therefore if there be a disseisor
 1. of one acre of land, and the disseisee doth
 17 Aff. pl. release unto the disseisor all his right by deed
 2. (as he ought) and afterwards it is covenanted
 43 Aff. pl. between them by indenture, that if the dis-
 12. seisee pay unto the disseisor four pounds be-
 fore the feast of *Easter* then next following,
 that then the release shall be void, and of no
 effect, &c. And the disseisee doth pay the
 money according to the indenture, yet the
 release is good and effectual, and shall not be
 avoided by such covenant or condition, &c.
 because the release taketh effect before the
 condition or covenant doth begin. But it
 H. 17 E. 3. 2. seemeth, that by the payment of the money,
 &c. the disseisor is seized unto the use of the
 disseisee, &c. *tamen quere*. But if such in-
 dentures and releases had been first delivered
 as the deeds of the parties *final & final*, then
 such condition or covenant is good to avoid
 the release, &c. And so shall it be, if such
 condition had been contained within the re-
 lease, if the release be by deed indented.
 The same law is of a release which
 goeth, and doth enure by way of enlarging
 * [314] of * an estate, and of a release which doth
 enure by way of extinguishment of a rent or
 common, &c. or to determine a title of en-
 try, and of feoffments, gifts, grants, leases,
 E. 21 H. 7. 24. confirmations, &c. and of sales, contracts,
 bargains, and retainers, &c. *mutatis mutandis*.
 But otherwise it is of things executories, if
 not that it be in special cases, &c.
 719. And therefore if a man doth enfeoff
 a stranger of certain land and tenements with
 warranty,

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warranty, and afterwards the feoffee doth grant unto the feoffor by deed, that if he be impleaded of the same land, &c. that then he will not vouch him by force of the same warranty, this is a good grant, because the voucher is executory.

720. If I be disseised of one acre of land, 7 H. 4. and my collateral ancestor doth release unto 43. the disseisor with warranty, and dieth without issue, and the warranty doth descend upon me, and afterwards the disseisor doth grant unto me by deed, that if he be impleaded that he will not help himself, nor take advantage by way of plea of this release, nor of the warranty contained therein, the same is a good grant, because it is made of a thing executory, &c.

721. And if a man seised of lands and tenements doth lease the same lands, &c. unto a stranger for life, in this case the lessee is punishable for waste: But if the lessor after the lease by a deed do *grant unto the lessee * [315] that he shall not be punished for waste, it is M. 9 H. a good grant; because it is made of a thing 6. 5. executory. It appeareth how the same law M. 21 H. shall be in all like cases, &c. 7. 31.

722. Now there are two manner of con- H. 42 E. 3. ditions; that is to say, conditions in deed, 24. and conditions in law: Of which Mr. Littleton hath spoken in his third book, in the Chapter of ESTATES, &c. But it is to know, that there are three manner of condi- M. 4 E. 4. tions in fact, which are not good, viz. con- 16. ditions against the law, conditions repugnant, and conditions impossible. And know, that
of

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of estates made upon conditions against the law, the estates are good, and the conditions are void, if the estates do not commence by the conditions, for then both are void, *viz.* the estates, and also the conditions, if not that it be in special cases, &c.

H. 4 H. 7. 4. 723. And therefore if a man seised of land do thereof enfeoff a stranger, &c. or thereof doth make a gift in tail, or maketh a lease thereof unto a stranger, upon condition, that if the feoffor, donor, or lessor, kill *J. S.* who is an enemy unto our lord the king, that then it shall be lawful for him to re-enter; the condition is void, and the estate is good. The same law is of a rent, common, and other things which lie in grant, &c.

724. If a feoffment, gift, grant, lease, or, &c. be made upon condition, that if the feoffor, donor, or grantor, or lessor, burn the houses of *T. K.* that it shall be lawful for him to re-enter, &c.

725. The same law is, if such condition be to be performed on the part of the feoffee, donee, grantee, or lessee, &c. But if a lease for life or years be made of land upon condition, that if the lessee kill *J. S.* within the term, then he shall have and hold the land leased unto him and his heirs for ever. Now notwithstanding that the lessee do kill *J. S.* within the term, yet his estate is not enlarged thereby; because that the condition is against the law, and the estate doth begin to be enlarged upon the performance of the condition: But notwithstanding such condition, yet the lease is good; because the

H. 4 H. 7. 4.

same

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same doth not begin by the condition, &c. 8 E. 4.

But if an obligation be indorsed expressly with
such a condition against the law, the obligation, and also the condition, are void. 13. E. 2 E. 4. 3.

726. As if a man be bounden that he will keep the obligee without damage, and doth not shew in what thing, such condition is void; because he may have damage by doing of treason, murder, or felony, &c. which are things against the law; and also it is against the law to keep a man from damage for such things, and so the condition is void. 9 H. 4. Condition 6.
But the obligation is void, because that such things are not expressly rehearsed within the condition, and so it * cannot be expressly said, * [317]
that the will of the obligee was, that the obligor should save him harmless for such acts done against the law.

727. And it is to know, that if a gift in tail be made of land, &c. upon condition that the donee shall discontinue the same land, &c. it is a void condition, because it is against the statute of *Westminster 2. cap. 1. de donis conditionalibus*, &c.

728. If a feoffment be made unto J. S. of land, upon condition that he shall enfeoff thereof the Abbot of *Westminster*, the condition is good, because that the feoffee may perform by the leave of the king, and of the lord of whom the land is holden; notwithstanding that the condition is *prima facie* against the statute of *Mortmain*, &c. As it is said, that if a gift in tail be made upon condition, that the donee may alien for the profit of his issue, that this is a good condition, H. 46 E. 3. 4. H. 8 H. 6. 24.

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dition; notwithstanding the statute of *Westminster 2. cap. 1. de donis; &c.* because that the statute was made unto the benefit of the issue of the donee, and this condition is for the benefit of the issue in tail, &c.

6 R. 2. 729. If a lease for years be made upon
 Condition condition, that if the lessor do alien the re-
 19. version within the term that the lessee shall
 have fee, and the lessor doth grant the rever-
 sion in fee unto a stranger by fine, the lessee
 shall not have fee by this condition, for the
 * [318] freehold, and the fee * is in the conusee law-
 ful before the lessee can take it by the con-
 dition; *tamen quære*, if the lessor had granted
 the reversion unto a stranger by fine for life,
 whether the lessee by force of the condition
 shall have fee, which is dependant upon the
 same estate for life.* And it seemeth to some
 that he shall have it; because, that when the
 lessor hath granted the reversion unto a stran-
 ger for life, he hath aliened it. And it seem-
 eth to some, that the lessee shall not have
 fee, which is dependant upon the estate for
 life by such grant; for they say, that the
 condition shall be intended of an alienation
 made of the whole reversion which was in
 the lessor, &c. *ideo quære*.

10 Aff. pt. 730. But if the condition were, that if
 15. the lessor grant the reversion unto a stranger
 in fee, that then the lessor for years shall have
 fee; and the lessor grant the reversion unto a
 stranger in fee by deed; in this case the les-
 see shall have fee by the condition. And
 the reason is, because that the reversion is
 not in the grantor before attornment, and yet
 the

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the lessor hath granted the same, and against this grant he cannot plead, that he did not grant it by the deed. But if the lessee do attorn unto the grant, then *quare*, if the lessee shall have fee by the condition; because he is the same person who should take advantage of the condition. But it seemeth unto some persons, that this attornment shall not take away his advantage by force of the condition; because that the fee is in him by the condition before his attornment, for the attornment cannot be so soon done but that there shall be an instance between the grant and the attornment; and immediately after that the lessor hath delivered the deed of grant of the reversion unto the grantee as his deed, the fee is in the lessee by force of the condition, which shall not be devided out of him by attornment, if not that it be by matter of conclusion; and the attornment is not any matter of conclusion unto him, &c. But *alienare idem est quod alienum facere*. So that notwithstanding that the lessor hath granted the reversion by deed, yet it is not an alienation before attornment; *causa patet*, &c.

And if the condition be, that if the lessee be ousted within the term by his lessor, that then he shall have fee; if the lessor oust him within the term he shall have fee. But *quare*, if the condition be, that if the lessee be put out by a stranger, &c.

731. And it is to know, that conditions are repugnants. As if a feoffment; or a gift in tail be made upon condition, that the feoffee, or donee shall not take the profit; or

upon

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upon condition that he shall not do waste, or upon condition that the wife of the feoffee shall not be endowed, these are void conditions, and the estate is good. And if a lease
 * [320] for life * be made upon condition that the lessee shall not do fealty, it is a void condition. And if a man who hath nothing in black acre, grant unto me a rent-charge issuing out of black acre, upon condition, that by the grant I shall not charge his person, it is a void condition, and so repugnant, &c.

T. 7 H. 6. 732. But in the same case, if the grantor,
 43. at the time of the grant, had been seised of the same black acre in demesne, or in reversion, the condition had been good. If a lease for life of land be made upon condition, that if the lessee be impleaded of the same land, that he shall not vouch his lessor; it seemeth the same is a good condition, yet it is said it is
 E. 5 H. 7. not, because that the reversion in such case
 7. is the cause of the voucher, &c. And if a man seised of lands in fee, leaseth the same lands by indenture for years, rendring rent, provided always that the lessor shall not distrain for the rent, it is a good condition, because that he may have an action of debt for the rent, &c.

733. If J. S. seised of land, doth lease the same land unto T. K. for term of life, rendring rent, &c. and T. K. being seised of
 T. 7 H. 6. 45. other land, leaseth the same land unto J. S.
 H. 21 H. 6. 33. for term of life, upon condition that if J. S. distrain for the rent reserved upon his lease,
 H. 21 H. 7. 21. &c. that then it shall be lawful for T. K. to

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to re-enter into the same land which he leased unto *J. S.* this is a good condition.

* 734. And if a man doth enfeof a stranger, with warranty, provided that the feoffee nor his heirs shall have nothing in value by force of the warranty, it is a good condition, because that notwithstanding that, the feoffee may take advantage of this warranty by way of rebutter, &c. And if a gift in tail, or a lease for life, or a lease for years be made upon condition, that the donee, or lessee shall not grant their estates, nor any part of their estates unto any other person or persons, the same is a good condition, by reason of the reversion which remaineth in the donor or lessor, &c. * [321]

735. Now is to speak of conditions impossible, and as to that know, that an impossible condition is void, but if such a condition be in making of an estate, the estate shall remain good, but estates shall not be enlarged by conditions impossibles: and if an obligation be endorsed with a condition impossible, the obligation is good, and the condition is void. And therefore if a man seised of lands in fee, doth thereof enfeof a stranger upon condition, that if the feoffee do not go out of *England* unto the Church of *St. Peter in Rome*, and return again into *England* within three days next following the feoffment, that it shall be lawful for the feoffor to re-enter, the condition is void, because it is impossible, and yet the estate is good, &c. H. 4 H. 7. 4.

* 736. But if a lease for life be made up- on such conditions, &c. that then the lessee shall * [322]

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E. 21 E. 4. 14. shall have fee in the land, his estate cannot be enlarged by such a condition, because the estate is not to begin to be enlarged but by the condition performed, and the same is impossible to be performed, &c. And if J. S. be bound unto T. K. in an obligation of twenty pounds, upon condition, that if the obligor go *ad terram sanctam* out of *England* in one day, next ensuing the date of the obligation, and return the same day into *England*, &c. this obligation is good, and the condition is void; *causa patet*.

737. If a man be bound in an obligation, upon condition to be performed in *France*, the condition is void. But if it can be tried it is good enough, notwithstanding that it be to be performed in *France*, as in time of war, divers things are done beyond the seas which shall be tried by the certificate of the marshal of the king's host, &c.

E. 14 H. 8. 32. If a lease for years be made of a wood by deed indented, and it is covenanted in the deed, that the lessee shall have the wood in as good plight as it was at the time of the lease made, and during the term the wood is destroyed by a sudden tempest; at the end of the term the lessor shall not have an action of covenant for the not performing of this covenant, for it is not possible for the lessee

* [323] to perform the same: But if * such a covenant be made upon the lease of a house, and the house be thrown down during the term, the lessor after the end of the term shall have an action of covenant for not performing of the covenant; *causa patet*: But in such case the

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the lessee shall not be charged in an action of waste, &c.

739. And as to the words which of themselves make estates upon conditions, &c. and of the making of feoffments in mortgage upon condition of the part of the feoffor, and where the feoffor or feoffee ought to demand the money, &c. and where it behoveth him who ought to perform the condition, to seek him to whom the condition M. 6 E. 2. ought to be performed, and by what persons, 55. and to what persons the condition ought to be performed, with divers other good and necessary matters appertaining unto conditions, Mr. *Littleton*, who was an honourable sage of the law, hath made a good and necessary declaration thereof in his Chapter of ESTATES upon CONDITION, &c.

740. And it is to know, that if the words of a condition be, *et pro solutione dict. &c.* that it shall be lawful for the feoffor and his heirs to take back the tenements, and to make his profit of them, by these words the feoffor and his heirs may re-enter for not payment, &c. The same law is, if the words of the condition be *et pro non solutione*, that the * feoffor and his heirs may *recipere* * [324] the lands, for they cannot be otherwise intended, notwithstanding the word *recipere* imply a livery to be made of the tenements, &c. *Quare*, if the words of the condition be, that the lessor and his heirs, *pro non solutione*, &c. may retain the lands, &c. how the words of the condition shall be taken, whether according to the intendment which

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the law maketh of the condition, or according to their signification.

35 H. 6.
10.

741. And therefore if I be enfeoffed of land, upon condition that I shall give all my goods (*si quæ fuerint*) in this case this word (*fuerint*) shall be taken in the present tense, and not in the future tense, because by the law it cannot be otherwise intended; for a man cannot give goods in which he hath no property. And if a man be enfeoffed, upon condition that he shall give all the pikes in his pond (*si quæ fuerint*) in this case (*fuerint*) shall be taken in the present tense.

742. If a feoffment in fee be made upon condition, that all the^d Doctors in *Paul's* (*si qui fuerint*) shall be at such a place such a day (*fuerint*) shall be taken in the present tense, &c. And the common making of charters is in the perfect tense, viz. by *dedi* & *concessi*; and yet they shall be taken in the present tense. If a man be enfeoffed

M 35 H. 6.
16.

* [325]

upon condition, that he shall be nonsuit in all his actions in the Common Pleas (*si quæ fuerint*) (*fuerint*) * shall be taken in the present tense: But if a man be enfeoffed upon condition, that he shall give all his goods in *London* unto *J. S.* (*si quæ fuerint*) in this case (*fuerint*) shall be taken for the time past, for he may have goods which were in *London*, but now are not there.

743. If a man be bound in twenty pounds, &c. upon condition that *J. F. Et omnes alii si qui fuerint feoffati ad usum dicti. J. de manerio de B. relaxaver. totum jus suum quod habent, &c. Cuidam T. F. filio suo, & hæred. dicti. J. F. et scriptum illud sigillo suo signat. ad*
P. T.

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P. T. *ad usum dict.* T. F. *citra tale festum* 8 Aff. pl. 5. *deliberaver, quod tunc, &c.* Now this word (*fuerint*) shall be taken for the time past, and it shall be intended that those who were his feoffees shall release, for it may be that he had feoffees who were disseised, and yet they had right according to the words following, *viz. totum jus quod habent*, and the intent of the condition was, that the release should be good and profitable, &c.

744. If a man make a feoffment, reserving rent, &c. and *pro non solutione*, &c. that the feoffor and his heirs may re-enter; now by these words they shall re-enter, for the word (may) doth imply liberty in the parties to whom it doth extend: If the words be, that the feoffee and his heirs (*pouvant*) *solvere*, &c. and *pro non solutione*, &c. that it shall be lawful for the feoffor and his heirs to re-enter; yet the feoffor and his heirs * shall * [326] not re-enter *pro non solutione*; *causa patet*.

745. If a lease be made for life, upon condition, that if the lessor or his heirs pay unto 12 Aff. pl. 5. B. or his heirs ten pounds at such a day, that it shall be lawful for the lessor and his heirs to re-enter; and if they do not pay it within the time, and the lessee pay unto the lessor or his heirs ten pounds at such a day, which is after the day of payment, which ought to be by the lessor or his heirs, that then the lessee shall have and hold the land to him and his heirs for ever: And the lessor nor his heirs do not pay the money, &c. nor doth the lessee pay, &c. yet the lessee shall hold the land during his term.

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746. If a feoffment be made upon condition, that if the feoffor pay ten pounds unto the feoffee, and goeth to *Rome* before such a day, that it shall be lawful for the feoffor and his heirs to re-enter: If he pay the ten pounds before the day, and doth not go to *Rome* before the day, he shall not enter; because the condition is by the word (*et*) which is a copulative: But otherwise it shall be if the condition be by this word (*vel*) because that is in the disjunctive, &c.

747. Now is to shew, how, and in what manner, a condition *in fait* shall be performed, &c. And as to that, there is a difference when the condition is to be performed to the party, and when it is to be performed unto a stranger, &c. * When it is to be performed between the parties, it is not requisite that the condition be performed in all things as is expressed, if the parties assent thereunto, &c. But if the condition be to be performed unto a stranger, it ought to be performed according unto the words of the condition in all effectual points, if not that it be in special cases.

748. And therefore if I be bounden unto *J. S.* in twenty pounds, to pay him ten pounds at a certain day, and in a place certain, if I pay him the ten pounds before the day, &c. and at another place, and the obligee do accept thereof, the condition is performed. But in the same case, if I pay unto the obligee the ten pounds, after the day of payment, and the obligee do accept thereof, yet the condition is not performed. And when a man is bounden in a greater sum to pay

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pay a lesser sum at a place certain, the obligee is not bounden to accept of the sum at another place than is appointed in the condition; but yet if he do accept of the same at another place it is good, &c. If J. S. be bounden in twenty pounds to T. K. to pay him ten pounds, and T. K. is indebted unto a stranger in ten pounds, and the other obligor, by the commandment of the obligee, pay the ten pounds unto the creditor of the obligee, in allowance of the ten pounds comprised in the condition, the same is a good performance of the condition. And in the same case, in an action of debt brought by the obligor * against the obligee, the obligee may make his defence and pray *auditum*, &c. and plead that he paid the ten pounds unto the obligee by the hands of the creditor of the obligee, &c.

749. If a man be bounden in one hundred pounds to pay one hundred marks unto the obligee, &c. and the obligee accept of ten pounds of the obligor, in satisfaction of the hundred marks, it is a good performance of the condition; and yet some have said the contrary, because that ten pounds cannot be satisfaction of one hundred marks, &c. But that is not material in his case, because the obligee is content therewith, &c. And if the obligee hath received a horse, or a gold or silver ring, or a quarter of wheat, or a cup, &c. of the obligor, in satisfaction for the hundred marks, it is a good performance of the condition of what value soever the horse, or, &c. be. But if J. S. be bounden unto T. K. in two hundred pounds, to en-

M. 2 E. 4.
3.
M. 19 E.
4. 1.
T. 9 E. 4.
23.
M. 22 E.
4. 24.
M. 31 H.
6. 11.
H. 27 H.
6. 10.
H. 9 H.
7. 18.
T. 22 E.
4. 3.
* [328]

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H. 9 H. 7. 18. feoff *T. K.* of the manor of *Dale*, and the obligor doth enfeoff *T. K.* of the manor of *Sale*, in allowance of the manor of *Dale*, and he accept thereof, yet the condition is not performed; because when the condition is to be performed of a thing not comprised within the obligation, it ought to be performed of the same thing comprised in the condition, if not that it be in special cases.

750. And therefore, if a man be bounden in one hundred marks to make a recognizance of thirty-nine pounds unto the obligee in the * [329] Common Pleas at *quindena Sti. Hil.* before, &c. and the obligor doth pay ten pounds unto the obligee for satisfaction of the condition, this is no performance of the condition, *tamen quære*; because some have said, that the recognizance is not to be made but for the assurance of the thirty-nine pounds, the which thirty-nine pounds cannot be intended of a thing within the obligation.

751. But if the condition of the bond be, that if the obligor make a sure, sufficient, and lawful estate of and in twenty shillings rent issuing out of his manor of *Dale* unto the obligee and his heirs, to have and perceive the same twenty shillings rent to him and his heirs, with clause of distress, that then, &c. And the obligor doth grant unto the obligee one annuity of twenty shillings for six years, that is no performance of the condition. The same law is, if the obligor had leased the manor of *Dale* unto a stranger H. 37 H. 6. 26. for years, or for life, in allowance of the grant of rent, according to the condition of the obligation. And if a man be bounden unto

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unto *J. S.* in one hundred pounds, to grant unto him the rent and farm of such a mill, &c. if the rent be granted unto the obligee to take effect in him by way of retainer, the condition is performed; *causa patet.*

752. But if a man be bounden in one hundred pounds to make a recognizance of forty pounds before such justices, and nameth them, at a certain day, &c. and with the assent of the obligee the obligor doth lease a * house unto him for the term of his life in * [330] satisfaction thereof, this is no performance of the condition.

753. If I be bounden in twenty pounds; &c. to deliver ten quarters of wheat, or four horses, or ten oxen, or forty sheep, and I with the assent of the obligee pay unto him five pounds in satisfaction thereof, the condition is not performed; *tamen quære, &c.*

H. 9 H. 7.
18.
M. 33 H.
6. 24.

754. And it is to know, that if the obligee be party or privy unto any act done, by which act the condition cannot be performed, then the obligor shall be discharged of the obligation, if not that it be in special cases. As put the case: *J. S.* is bounden in one hundred pounds to *T. K. Abbot of Westminster, &c.* to enfeoff *C. D.* of the manor of *Dale*, before such a day, &c. and before the day *C. D.* is a Monk professed under the obedience of the same Abbot who is the obligee; in this case, the obligor is discharged of the obligation: But *quære*, if *C. D.* be deceased before the day the feoffment be to be made, whether *J. S.* be bounden to enfeoff him or not. But if the condition be to be performed unto a stranger, and it may lawfully and possibly be

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done,

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done, and the obligee be no party nor privy to any act done, by which act the condition ought to be performed, then such condition ought to be performed in all things as it is, if not that it be in special cases.

755. And therefore, if *J. S.* be bounden
 * [331] * unto me in ten pounds to pay unto *T. K.*
 36 H. 6. ten marks before such a day, at such a place,
 9. &c. and before the day the obligor doth give
 1 Inst. 212. unto *T. K.* a horse, in satisfaction for the ten
 b. marks, and *T. K.* do accept thereof, yet the
 same is no performance of the condition; for
 a stranger by his act, without my assent, shall
 not take away my duty, &c. The same law
 is, if the obligor had paid the ten marks be-
 fore the day, at another place than is com-
 prised in the condition. So shall it be if there
 be a day appointed certain in which the pay-
 ment ought to be, and *T. K.* do receive it at
 another day, &c.

756. And if a man be bounden unto
 4 H. 7. 3. *J. S.* in one hundred pounds to marry his
 E. 33 H. daughter before such a day certain, notwith-
 6. 18. standing the obligor before the day often
 M. 2 E. 4. tender unto the daughter for to marry her,
 2. and she refuse, so as the obligor cannot per-
 30 H. 6. form the condition, the obligation is for-
 12. feited, because the condition was lawful, and
 possible to be done, and is to be done unto a
 stranger, and the obligee did not do any
 thing whereby it might not be performed.
 The same law is, If I be bounden unto *C. D.*
 in twenty pounds, that *T.* shall enfeoff *J. S.*
 of black acre before such a day certain, and
T. doth not enfeoff *J. S.* before the day of
 black acre, I have forfeited my bond; be-
 cause

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cause that by the condition I have taken upon me that such a feoffment shall be made.

757. And if I be bounden to *T. D.* in ten pounds * to enfeoff *Alice Stile* of the manor of *Dale* before the feast of *Easter*, and before the condition performed, and before the day I marry *Alice Stile*, and the marriage doth continue till the day be past, the obligation is forfeit; and notwithstanding that before the feast of *Easter* I do enfeoff a stranger of the manor of *Dale* for to enfeoff my wife, and he doth so, yet I have forfeited my obligation. * [332] H. 4 H. 7. 4.

758. But if I be bound in twenty pounds unto *T. K.* to appear before the Justices of the Common Pleas *Ostabis Michaelis*, to answer to such a one in an action there brought against me, &c. and at the day, I come into court and appear, and the plaintiff is essoined, so that I cannot answer unto him, in this case, my bond is saved: But if I be bound unto *T. K.* in four pounds to ride with *L. C.* such a day unto *Dale*, and *L. C.* will not ride that day, I have forfeited my bond, &c. But if I be bounden unto *B.* in ten pounds, unto the use of *T.* to enfeoff *T.* alone of the manor of *Dale*, &c. and I do all that lieth in me for to enfeoff him, and he will not be enfeoffed thereof, my bond is saved; *causa patet.* E. 2 E. 4. 2. M. 8 E. 4. 25.

759. If a man be bound in twenty pounds unto *J. S.* upon condition that the obligee shall enfeoff a stranger of the manor of *Dale*, before such a day, &c. and the obligee will not enfeoff the stranger, &c. the bond is forfeited, notwithstanding that he, viz. * the obligee, * [333]

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M. 22 E. obligee, is the impediment that the condition
 4. 15. cannot be performed; because that the obli-
 M. 17 E. gor took upon him by the words of the con-
 4. 5. dition, that the obligee should so do. But if
 H. 9 H. the words of the condition had been, if the
 7. 20. obligee do enfeof a stranger, &c. and the
 M. 29 H. stranger doth require the obligee for to en-
 6. 11. feoff him, and he refuseth so to do, the ob-
 T. 4 E. 4. ligation is not forfeited.
 2.

760. If a man be taken upon a *capias*, and findeth sureties by bond to appear *Ostabis Trin.* and the sheriff return the writ at the day, and the same day a writ of adjournment is directed unto the justices to adjourn the court until *Quindena Michaelis*, and the obligor cometh, and sheweth unto the court, how that he was bound for to appear at the same day, and prayeth that they would record his appearance, and the justices will not record his appearance, but bid him keep his day at *Quindena Michaelis*, the bond is not forfeited, insomuch as if he appear at *Quindena Michaelis*, by this appearance he shall save his bond. And if in the same case the action had been discontinued, by the demise

M. 38 H. of the king before *Ostab. Trin.* and the ob-
 6. 19. ligor had not appeared *Ostab. Trin.* yet the
 M. 38 H. bond had not been forfeited.

6. 3. 761. But if *J. S.* be bounden unto *T. K.*
 H. 15 H. that *G. F.* shall appear *Ostabis S. Trin.* in the
 7. 2. Common Pleas in an action of debt brought
 T. 9 E. by the said *T. K.* against the * said *G. F.* re-
 4. 25. turnable at the same day, and *G. F.* do ap-
 M. 28 E. pear the same day, and his appearance is not
 4. 19. recorded, the bond is forfeited: But if in the
 * [334] same case, *G. F.* dieth before *Ostab. Trin.* the

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bond is saved; because the condition is become impossible by the act of God.

762. And in the same case in an action of debt brought upon the obligation, it is no plea for the defendant to say that the writ was not returned; if so be that he that ought to appear hath day by the roll: But it is a good plea to say, that he who was to appear was imprisoned at *Dale*, within the county of *Middlesex*, by the plaintiff, or at his suit, before the day of the return of the writ, and continued there in prison until the day of the return of the writ was past, &c. And the reason is, because he himself is the cause that the condition cannot be performed.

M. 31 H.
6.
Entre 60.
T. 9 E.
4. 2.

763. If a sole woman seised of land in fee, do by deed indented thereof enfeoff a stranger, reserving rent unto her and her heirs, the rent payable yearly at the feast of *Easter*, *Et si contingat redditum prædict. a retro fore in parte vel in toto non solvit. quod tunc bene liceat* to the feoffor and his heirs to re-enter, and the feoffor and the feoffee do intermarry, and the marriage doth continue between them for divers years, &c. yet the condition is not broken; because that during the marriage betwixt them, * the rent is in suspense; and the cause of the suspension is, that the woman was a party to the same by her agreement, and during the time that the rent is in suspense, it ought not to be paid, &c.

* [335].

764. But in the same case, if the feoffment had been made upon condition to pay ten pounds unto the woman who is the feoffor at the feast of *Easter*, &c. and afterwards the feoffor and the feoffee do intermarry

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marry before the payment of the money, and before the day of payment, and during the marriage the day doth pass, the condition is performed; because that the money is but a sum in gross, and a duty, so as it shall be presently extinguished in the husband, because it is but a personal duty; insomuch as if the woman had made a feoffment unto a stranger before the marriage upon such a condition, and the husband during the marriage, and before the day of payment, release all manner of conditions, duties and demands unto the feoffee, by this release the condition, and the duty is extinct and determined. But if the husband release all entries and demands unto the feoffee after the day of payment, if the wife survive her husband, she may enter for the condition broken, notwithstanding her husband's release: And the reason is, because the condition was broken before the release, at what time the wife had title of entry into the * lands and tenements, which title of entry may descend unto her heir, &c.

* [336]

765. But if a sole woman seised of land, do thereof enfeoff a stranger by deed indented, upon condition that the feoffee shall enfeoff the woman of black acre before the feast of *Easter*, &c. and before the feast of *Easter*, and before the condition be performed, the feoffor and the feoffee do intermarry, and during the marriage, the day before which the condition ought to be performed passeth, *quare*, whether the condition be performed or broken; and if the condition be broken, the husband is presently seised of the same land, in the right of the wife, &c.

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766. And if a man doth enfeoffe me by deed indented, upon condition that I shall pay unto him ten pounds at the feast of *Easter*, and the feoffor maketh me his executor, and entreth into religion, and is professed before the condition performed, and before the day wherein it ought to be performed, and continueth in religion until the day be past, and afterwards he is deriegned, yet I shall keep the land for ever, &c.

767. If a man be bounden unto me in one hundred pounds to enfeoffe me of the manor of *Dale* before such a day, and before the day the obligor doth enter into religion, and afterwards the obligee doth enter into religion, and the day * doth come, and then both of us are * [337] deriegned, it seemeth that the obligation is forfeited; because there was a time for the obligor to tender the money, and because the obligor at the first hath disabled himself, and all times after till the day before which the condition ought to be performed incurred, he remaineth to perform the condition, and the condition is for his advantage, and he ought to do the first act, insomuch as if the obligor be not ready upon the land, nor other for him to make the feoffment, and the obligee doth not come thither, nor any for him, yet the bond is forfeited; for in such case, in an action of debt brought E. 7 E. 4. upon the obligation, the issue shall be, whether the obligor were ready upon the land M. 21 E. to make the feoffment or not, &c. 4. 55.

768. And if a man be bounden unto me in twenty pounds to pay unto me thirteen pounds at *Paul's* such a day, at which day the obligor

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obligor nor any for him come thither, the bond is forfeited, because the obligor ought to do the first act, and therefore ought to be there ready, &c. For if in an action of debt brought upon the obligation against the obligor, &c. he sheweth the condition, and that he was ready at *Paul's* according to the condition, and that the plaintiff, nor any for him, was there to receive the money, the plaintiff may say that he * was there ready to receive the money, without that, that the obligor was ready there to pay the same, &c. But if the obligee be disabled to take according to the condition, it behoveth not the obligor to tender the performance thereof unto him, if not that it be in special cases.

769. And therefore, if I be bounden unto a sole woman in one hundred pounds upon condition that if I do marry her before such a day, that then, &c. and before the day the woman taketh a stranger to be her husband, and the marriage between them doth continue until the day be past, in that case, I am not bounden for to tender the performance of the condition unto her, because she was not of ability for to receive the same, &c.

770. And if I be bounden in twenty pounds upon condition, that if I do enfee the obligee of black acre before such a day, that then, &c. and before the condition performed, and before the day, &c. the obligee doth enter into religion, and is professed, and continueth professed until the day doth come, in
this.

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this case it behoveth not him to be ready upon the land to make the seoffment, &c.

771. If a man be bounden in one hundred pounds unto A. S. upon condition that if the obligor doth marry her before such a day, that then, &c. and before the day the * ob- * [339] ligee, &c. is a Nun professed; and after, before the day the obligor is a Friar professed, and then the day doth come, the obligor and the obligee being both professed in religion, and afterwards they are both dereigned, the obligation is not forfeited. The same law is if they both are disabled at one and the same time, &c.

772. But know, that sometimes the first act as unto the performance of the condition, ought to be done by the obligee, otherwise the obligor is not bounden to perform the condition. As if a man be bounden unto me in ten pounds, that J. S. shall serve me *in omnibus mandatis licitis et honestis* for a whole year certain, in this case, if I do not command J. S. to serve me, by reason whereof he doth not do me service, the obligation is not forfeited: But if the condition were, that J. S. shall be a good and faithful servant unto the obligee for a whole year certain, it behoveth that in this case J. S. tender his service unto the obligee, notwithstanding that M. 6 E. 4. the obligee doth not command him any service, otherwise the obligation is forfeited. But if in such case J. S. tender his service unto the obligee, and he refuse to have any service from him, the obligation is not forfeited, &c.

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773. If a man be bounden in twenty pounds
 * [340] * unto J. S. upon condition, that if the obligor goeth unto *Rome* with the obligee at the request of the obligee, that then, &c. in this case the obligor is not bounden to go unto *Rome* with the obligee, but at his request, &c. If one be bounden unto me in twenty pounds, that at what time soever that I shall come unto the town of *Dale*, that it shall be lawful for me to enter into the house of the obligor there; and if the obligor do not suffer me to continue three days and three nights there, that the obligation shall stand, or otherwise shall be void. Now if the obligor see me coming unto his house, shut up the doors, and goeth unto another place, so as I cannot enter, the obligation is not forfeited; for in this case, the obligee ought first to enter, &c.

M. 3 H.
 4. 9.

14 H. 4.
 92. 774. If a Parson of a Church be bounden in one hundred pounds unto an Abbot, that if within a certain time he will resign his benefice for a pension, as shall be agreed betwixt them, that then, &c. and they agree that the Parson shall have a yearly pension of four pounds. In this case it behoveth the Abbot to tender unto the Parson a sufficient deed of the pension, otherwise the Parson is not tied by this obligation, and condition for to resign. And so in divers cases the first act ought to be done by the obligee. And sometimes the first act concerning * the condition of an obligation ought to be done by a stranger, &c.

* [341]

775. And therefore if I be bounden unto J. S. in one hundred pounds to stand unto the
 the

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the arbitrament and judgment, &c. of *T. K.* and *D. C.* and they make no award, the obligation cannot be forfeited, &c. And if a man be bounden unto me in one hundred pounds to make a sufficient and lawful estate by the advice of *J. D.* &c. if *J. D.* do not give any advice, and the obligor do not make any estate, &c. the obligation is not forfeited. M. 7 E. 4. 13. And if *J. D.* do give advise, and the obligor doth make estate accordingly, the condition is performed, whether the estate be sufficient or not, or lawful or not, &c.

776. But if a man be bounden in one hundred pounds that if he shall make unto the obligee a sure, sufficient, and lawful estate in fee in certain lands by a day certain, that then, &c. in this case the estate ought to be sure, sufficient and lawful, otherwise the obligation is forfeited.

777. If a man be bounden in one hundred pounds to make as sure, &c. estate unto the obligee as shall be devised by the council learned in the law of the obligee, &c. in this case the council of the obligee are to advise the estate; and notice thereof ought to be given unto the obligor, otherwise he is not bounden * for to perform it, * [342] &c. And it is said, if in the same case the obligee hath four men learned in the law of his council, and two of them give advice, and the other two give no advice, the obligor, in an action of debt brought against him upon the obligation, may plead *quod consilium* of the plaintiff *non dedit advisamentum*, for the advice in such case ought to be given by all the counsellors learned in the laws, &c.

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As if the condition were, that the obligee, &c. make such estate as the justices of the bench shall advise, and there are four justices, and two of them give advice, and two give no advice, the obligor is not bounden by such advice; *tamen quære.*

778. But it is to know, that if a man be bounden in one hundred pounds unto J. S. to enfeoff the obligee such a day of the manor of *Dale*, &c. it behoveth the obligor in this case to be ready upon the land, to make the feoffment at the last instance of the day appointed, &c. without any request made by the obligee. And in the same case the obligor needeth not give notice thereof unto the obligee; *causa patet.*

779. But if a man be bounden unto me in twenty pounds, to enfeoff J. S. alone of the manor of *Dale* before such a day, in this case the obligor ought to make the feoffment unto J. S. at his * peril, otherwise the bond is forfeited: But if I do enfeoff J. S. upon condition that he shall re-enfeoff me, in this case I ought to make request to the feoffee, otherwise the feoffee is tied to re-enfeoff me. But if the feoffment be made of certain land

T. 9 H. 7. upon condition, to enfeoff a stranger of the
3. same land, it behoveth the feoffee in this case
E. 3 E. 4. to make a tender of the feoffment unto the
71. stranger to whom it is to be performed, &c.

780. If a man grant unto me annuity payable at a certain day, and no place is limited where it shall be paid, and the grantor is bounden unto me in twenty pounds, that he shall pay unto the annuity at every day that it ought to be paid: It behoveth that
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the grantor seek me in what place soever I am, if I be (*infra quatuor maria*) to pay unto me the annuity, and that is to save the forfeiture of his obligation; for the grantor was not bounden to pay unto me the annuity by reason of the grant, without request, &c. But if the obligor at the day in which, &c. tender unto me the annuity, and prayeth me for to make an acquittance unto him, and I will not make acquittance unto him, by reason whereof he doth not pay unto me the annuity; yet he hath not forfeited his obligation, &c.

* 781. And if a man be bounden unto * [344] me in twenty pounds, to pay unto me a lesser H.22H.6. sum at such a day, and doth not appoint any 4. place where the payment shall be, the obli- E.7E.4.4. gor ought to seek me, &c. and to tender M.22E.4. the lesser sum according unto the condition, 25. &c. 20H.6.9.

782. If a man be bounden in twenty pounds to stand unto the award of J. S. &c. and J. S. maketh an award which is void, yet the obligor ought to perform the H. 8 E. 4. same for to save the forfeiture of this bond, 23. if the award be not impossible, or against the M.17E.4. law, as to kill a man or a woman, or to 5. burn houses, or to steal goods, or any such M.19H.6. like thing, &c. But the obligor is not charge- 36. able in an action upon an arbitrament which E.33H.6. is void. And in the same case, if J. S. hath 2. awarded that the obligor pay unto the obligee twenty shillings before the feast of *Easter*, and the obligor before the said feast tender the twenty shillings unto the obligee, and he refuseth the same, and bringeth an action of debt

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debt against the obligor upon the bond, &c. he may plead the condition, and the award, and say that he tendred unto the obligee the twenty shillings accordingly, and that he refused the same, &c. without tendring this money in court, because the obligee might have an action of debt upon the arbitrament

* [345] for the twenty shillings, * and also because that the twenty shillings were not a duty to the obligee before the arbitrament, &c.

E. 7 E. 4. 783. If a man be bounden in twenty
3. pounds to pay ten pounds at a certain day,
E. 20 E. 4. and the obligor doth tender the money unto
1. the obligee accordingly, and he refuseth the
E. 22 E. 4. same, yet in an action of debt brought upon
25. the obligation against the obligor, it beho-
veth the obligor to plead the condition, and
the tender and the refusal, and say, that he
is yet ready to pay the ten pounds, and ten-
der the same in court, because it was a duty
before the obligation, and the obligor is not
thereof clearly discharged by the obligee, but he
is bounden by the obligation to pay the same
upon a pain of forfeiture of a greater sum,
and the obligee cannot have an action to de-
mand the same, but upon the obligation.
The same law is; notwithstanding the lesser
sum were payable at a place certain, &c.

784. But if the condition of the obligation
be of matter without the obligation, &c. as
to enfeof the obligee, or to give unto him
T. 18 E. 4. a horse, a gown, a hawk, a knife, a pair of
9. spurs, a lance, or a cap, &c. at a day cer-
H. 7 E. 4. tain, or any other thing which is not parcel
4. of the duty comprised in the obligation, if
M. 47 E. 3. the obligee doth refuse any such thing, &c.
29. In

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In an action of * debt brought upon the obligation, the obligor shall plead the condition, and the tender and refusal; but shall not need to say, that he is yet ready, &c. But it is said by some, that if the condition of the bond be of a horse, which horse was due unto the obligee, before the bond made, by reason of a sale thereof made by the obligor unto the obligee; or other perhaps that the horse were delivered by the obligee unto the obligor for a certain time, &c. Or by other means perhaps the horse is due to the obligee by the obligor, &c. notwithstanding that in such case the obligee doth refuse the horse, when it is tendred unto him according to the condition of the bond, so as by that the sum comprised in the condition of the bond is not forfeited, yet the obligee shall have an action for the horse as the case is. But I conceive the law to be contrary; because the obligee hath bond for the same horse, if not that the horse were first delivered by a matter in writing, &c. And the same law is, of all other the like things, &c. *mutatis mutandis.* * [346]

785. If a man be bounden in ten pounds to deliver unto the obligee twenty quarters of wheat at a certain day, and it is not appointed in what place they shall be delivered, the obligor is not bounden to carry the wheat

* with him unto every place, but it sufficeth * [347] for him to say unto the obligee, Sir, your wheat is ready for you, where you will have it to be brought unto you: And if the obligee will not appoint unto the obligor a place where the wheat shall be brought, the bond is saved, &c. And if the obligor at the day bring

M. 8 E. 4.
22.

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bring the wheat unto the house of the obligee, and say unto the obligor, Sir, I have brought unto you your wheat according to the condition of the bond, I pray you receive it, and he saith unto him, that he will not receive there, but he will receive it at another place, and the obligor will not carry the same unto the other place, yet the bond is saved. And in an action of debt brought against the obligee upon the bond, he may plead the condition, and the special matter; and not tender the wheat in court, &c. And it is to know, that if any thing be comprised in the condition of a bond, and it is not limited what person ought to do the same, then the obligor or obligee, viz. he who hath the most skill ought to do the same; but if neither the obligor, nor the obligee have knowledge to do the same, or if either of them hath several skill, &c. then it shall be done by the obligor, if not that it be in special cases, because that the condition of the bond is for the advantage of the obligor.

* [348] * 786. And therefore if a taylor be bounden unto me, &c. upon condition, that if I bring unto his shop three ells of cloth, which shall be cut out, and if the taylor make me a gown thereof, that then, &c. and it is not appointed in the condition who shall cut out the gown, therefore it shall be taken, that he who hath most skill to do it shall do the same, which is the obligor, &c. And if the condition were, that if the obligee bring three ells of cloth unto the shop of the obligor, which shall be measured, and it is not

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not appointed by whom it shall be measured, then they shall be measured by the obligor; *causa patet, &c.*

787. Now is to shew at what time conditions shall be performed, if no time be appointed for the performance thereof: And as unto that, know, that if the conditions be T.15 E.4. to be done only for the profit and benefit of ^{23.} a stranger, then it behoveth that they be M.33 H.6. done, and performed within convenient time, ^{54.} if not that it be in special cases.

788. And therefore if a man be enfeoffed of land, upon condition that he shall marry the daughter of the feoffor, and no time is limited when, nor within what time it ought to be done, the feoffee ought to perform the same within convenient time, because * that the daughter of the feoffor is to * [349] have benefit and profit by the performance of the condition, viz. advancement; for it cannot be intended that the feoffment was made unto any other intent, &c.

789. If a man be enfeoffed upon condi- E. 2 E. 4. tion, that the feoffee shall enfeoff a stranger, ^{26.} it behoveth the feoffee for to tender the feoff- E. 17 E. 4. ment unto the stranger within convenient ^{2.} time, &c. But if a man be bounden in ten M. 33 H. pounds unto J. S. to pay four pounds unto ^{6. 54.} a stranger, and it is not appointed when the T. 9 E. 4. four pounds shall be paid, if the obligor pay ^{22.} it unto the stranger at any time during their T. 9 H. 7. lives, the bond is saved: And the reason is, because that the condition of the bond is for the benefit and profit of the obligor. The same law is, if the condition of the bond be, that the obligor shall enfeoff a stranger of, &c. and no
P time

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time is appointed when the feoffment shall be made, &c.

M. 21 H. 790. And notwithstanding that it be com-
6. 10. monly said, that the condition of an obliga-
E. 4 H. 7. tion shall be always taken for the benefit and
6. advantage of the obligor; yet if a man be

bounden upon condition, that if he or his
feoffees of his manor of *Dale* grant unto the
obligee twenty shillings rent for the term of
life issuing out of the same manor, before
such a day certain, that then, &c. * and the
obligor hath three feoffees of his manor of
Dale, and two of his feoffees grant the rent
unto the obligee, this is no performance of
the condition; and yet the feoffees of the
obligor have granted the rent: But by these
words (his feoffees) shall be intended all his
feoffees, &c.

* [350]

791. If a man be bounden, &c. upon
condition, that if the obligor sufficiently
prove that it was the will of *C. D.* that
T. K. should make an estate unto the obligor
of land in fee, &c. that then, &c. in this
case it is most for the benefit and advantage
of the obligor to make proof by witnesses be-
fore some honest men in the country; and
yet the proof ought to be made by an inquest,
for the most sufficient proof in law is by a
jury. And the condition doth not mention
in what manner the proof shall be made, nor
before what person, but saith only, that it
shall be sufficiently proved. And therefore
the law shall say, that it shall be proved by
the most sufficient proof, which is by inquest.
But if the words of the condition are, that
he shall make the proof before such a one,
&c.

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Et c. which are not justices, *Et c.* then the proof shall not be made by jury. Or if the condition be, that if it be proved sufficiently before such a day, *Et c.* before *A. B.* and *C. D.* justices * of our sovereign lord the * [351] King; and indeed they are justices of peace, or *quorum*, and not justices of the one bench or the other, nor barons of the Exchequer, nor any such justices which may make a trial by jury, then the proof shall not be by jury, if not that the proof be to be made by indictment. And notwithstanding that the proof be to be of such a thing as may be tried by jury, yet if the proof be to be made at such a time, in which they have no power to take an inquest, the trial shall not be made by inquest, *Et c.*

792. If a man be bounden unto *T. K. M.* 35 *H.* upon condition, that if the obligor do acquit *R.* 13. and discharge the obligee before the feast of *Easter*, *Et c.* of an yearly rent of twenty shillings against *R.* with which rent all the lands of the obligee are charged unto *R.* for the term of his life, that then, *Et c.* notwithstanding that the obligor do the pay said rent unto *R.* at every term it ought to be paid until the feast of *Easter* be past, and requireth an acquittance thereof made unto the obligee by the said *R.* in writing sealed; and the same is delivered by *R.* unto the obligee as the deed of the said *R.* yet he hath forfeited the sum of money comprised in the obligation; because the condition * shall be * [352] taken, that he ought to discharge the obligee of the said rent, in the right, *viz.* to determine the rent for ever, *Et c.*

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793. And it is to know, that if I do enfeoff a stranger of land upon condition, that he shall re-enfeoff me, and no time is limited when the feoffment shall be made, then the feoffee ought to make the feoffment when he is required, if the request be made at a lawful time, &c. And it is said, that by such feoffment without other condition, the feoffee is seised unto the use of the feoffor and his heirs; for by the condition, the feoffee is not to have any profit; but the feoffor is to have back the land by the condition, so as there is not any condition by which the use may be altered; *tamen quære* of the use. But it appeareth upon the matter, that the feoffment, nor the condition, is not made for the benefit of the feoffee, &c.

E. 44 E. 3. 7:

794. But if the feoffment be made upon condition, that the feoffee shall pay unto the feoffor ten pounds, and no time is limited when the money shall be paid, in this case, the feoffee may perform the condition at any time during their lives, *viz.* during the life of the feoffor and the feoffee; for in this case, the feoffee * is seised of the land unto his own use by the reason of this condition; so he hath benefit and profit thereby, and the feoffor is to have the ten pounds for the land, &c.

* [353]

795. If lessee for twenty years of a house grant his estate unto a stranger upon condition, that he shall obtain the good will of his lessor, and the stranger openeth the matter unto the lessor, and the lessor saith that he shall not have but the house which is fallen, that he, *viz.* the stranger shall have the

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the same. And after the stranger obtaineth the good will of the lessor of his grantor, the condition is performed, notwithstanding that the grantee did not obtain the good will of the lessor of his grantor, in three or four years after the grant; for know, the condition was unto the profit of the grantee: And it is not limited when it shall be, and therefore it is sufficient for him to obtain his good M. 18 E. will of the lessor of his grantor within the 4. 16. term: And the words of the lessor of his H. 14 H. 8. grantor unto the stranger shall not change 22. the condition; for a condition cannot be broken nor determined, if not by acts done betwixt the parties, &c. if not in special cases, &c.

796. And therefore if I do enfeoff *J. S.* to enfeoff *T. K.* and *J. S.* * said unto *C. D.* * [354] that he will never enfeoff *T. K.* by these words, the condition is not broken: But if he had said such words to *T. K.* the condition had been broken. And if *R. M.* be bounden unto H. 46 E. 3. *H. S.* in twenty pounds, upon condition, 4. that if *T. A.* be not content at his return from beyond the seas with the presentment which the said *H.* hath made to the said *R.* to the Church *C.* in *Dale*, &c. and that he then resign, that then, &c. *T. A.* cometh unto *C.* and disagreeeth unto the presentment, and saith that he will that one *J. S.* his cousin, shall have the same, and prayeth the said *R. M.* that he will resign, and he refuseth; now if afterwards the said *R. M.* come unto *T. A.* unto another place, and say unto him that he was presented unto the same Church, and demand of him that he acknowledge the same,

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and he say unto him that he is content therewith, yet notwithstanding this agreement, after the disagreement, the obligation is forfeited; *tamen quære*. But if the condition hath relation unto the act precedent, and no time is limited when it shall be done, yet it ought to be done when the precedent act is done, if not that it be in special cases.

* [355] 797. And therefore if *J. S.* be* bounden in twenty pounds unto me, upon condition, that if I do enfeof him of black acre, that then he will pay unto me ten pounds, &c. in this case, presently when I have enfeofed the obligor of black acre, he ought to pay unto me the ten pounds, notwithstanding that there be no time limited when it shall be paid.

798. And if I do enfeof a man of land upon condition, that if *J. K.* give unto him ten pounds, or goeth unto *Rome* such a day, &c. that then the feoffee shall pay unto me ten pounds, &c. Now these ten pounds ought to be paid when *J. K.* hath given unto the feoffee, or gone to *Rome* before the day limited, notwithstanding that no time be limited when it shall be paid, because it hath relation unto an act precedent, &c.

799. If *J. S.* be bounden unto *T. K.* &c. upon condition, that if it happen the goods which *T. K.* hath delivered to *C. D.* to be taken or purloined out of the possession of the same *C. D.* and then the said *C. D.* pay and
 M. 33 H. satisfy unto the said *T. K.* for such goods so
 6. 52. taken, that then the obligation, &c. In this case the satisfaction for the goods ought to be made presently after the taking or purloining
 of

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of them out of the possession of the said *C. D.*
&c.

* 800. And it is to know, that there is a * [356]
 diversity when the condition is to be performed on the part of the feoffor or grantor, *&c.* and when it is to be performed on the part of the feoffee or grantee, *&c.* For when the condition is to be performed on the part of the feoffee or grantee, it behoveth him that he be not disabled at the time to do or perform the same; or if such feoffee, *&c.* do any thing which turneth unto the prejudice of the title, or unto the profit or value of the land, *&c.* the feoffor may presently enter, or the grant shall be presently determined, if the condition be annexed unto the grant, if not that it be in special cases.

801. But when the condition is to be performed on the part of the feoffor or grantor, notwithstanding that they are disabled to perform the same at any time before the day, in which it ought to be performed; yet if they are able to perform the same at the day, *&c.* it is sufficient, if not that it be in special cases. And therefore if I do enfeoff a man upon condition, that he shall enfeoff a stranger before a day certain, and the feoffee before the day is professed a Monk, I may enter presently into the land, and notwithstanding * that the feoffee be dereigned before the * [357]
 day, yet the condition shall not be revived. The same law is, if the feoffee were sole at the time of the feoffment, and before the day, and before the condition performed he ^{Inst. 221:} taketh a wife, *&c.* or if he suffer a stranger ^{b.} for to disseise him, and taketh back an estate

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1 Inst. 222. unto himself, and unto another, or if he
 a. suffer the lands to be recovered against him,
 E. 44 E. 3. it is said, that notwithstanding that execu-
 7. tion be not sued, the feoffor may enter; be-
 cause it is in prejudice of the title of the
 land, or if execution be sued forth by force
 of a judgment, or if the demandant doth
 enter into the land by force of the judgment,
 the feoffor may enter; or if the feoffee be
 bounden in a Statute-Merchant, or a Statute-
 Staple, or grant a rent issuing out of the same
 land, the feoffor may enter; so shall it be in
 all like cases. And as it is of feoffments
 upon condition, so shall it be of leases, grants,
 &c. upon condition, *mutatis mutandis*, &c.

1 Inst. 221. 802. But if a man do enfeoff a stranger
 b. upon condition, that if the feoffor do enfeoff
 the feoffee of black acre, or pay unto him
 ten pounds before such a day, &c. that then
 it shall be lawful for the feoffor and his heirs
 * [358] to re-enter, &c. and afterwards * the feoffor
 is a Monk professed, and is dereigned before
 H. 35 H. the day, and before the day he doth tender
 6. 59. unto the feoffee a feoffment of black acre,
 E. 7 H. 4. and he refuseth the same, or tendreth to pay
 13. him the ten pounds, and he refuseth to accept
 thereof, the feoffor may re-enter, &c. The
 same law is of leases and grants; *mutatis mu-*
tandis, &c.

803. If a man grant annuity unto another,
 until he be advanced unto a benefice, and the
 grantee taketh a wife, the annuity is deter-
 7 H. 4. mined; because he hath disabled himself to
 116. take the benefice. But if a man be bounden
 unto J. S. in twenty pounds, upon condition,
 that if the obligor do present the obligee unto
 the

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the Church of *Dale*, at the next time that the said Church shall become void, notwithstanding that *J. S.* taketh a wife, and that the marriage doth continue betwixt them until the time that the Church doth become void; yet if the obligor will save his obligation, he ought for to present *J. S.* to the same Church of *Dale*. 20 Aff. 1.

804. And it is to know, that when annuity of ten marks is granted unto a man, until he be promoted unto a benefice by the grantor, and it is not expressed of what value the benefice shall be, the benefice ought * to * [359] be of as great value as the annuity or more; and it ought also to be of as sure estate as the annuity; otherwise, notwithstanding that the grantee doth refuse it, the annuity is not determined. For if the grantor doth tender unto the grantee a presentment unto a benefice which is void, to which benefice the grantor hath no lawful title to present, notwithstanding that the Church be of as great value, or more than the annuity; and if the benefice be such that the grantee shall have cure of souls, if the grantee being within the age of twenty-four years, the grantor tender unto him a presentment unto the same Church, the grantee may refuse the same, notwithstanding that the Church be of sufficient value; and notwithstanding that the grantor hath lawful title to present unto the same. And if no value of the benefice be expressed, it shall always have relation unto the value of the annuity, and not unto the person of the grantee.

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805. And therefore if I grant unto the King's Chaplain annuity of forty shillings, until he be promoted by me unto a convenient benefice; and I tender unto him a presentation unto a vicarage worth ten marks by the year, and he refuse the same, the annuity is determined, &c. But * if the grantor present the grantee unto a convenient benefice upon other consideration than to determine the annuity; and it is so expressed in a deed indented made betwixt them, and sealed and delivered as their deed, &c. Notwithstanding that the grantee doth accept of the presentment, yet the annuity is not determined.

* [360]

E. 10 E. 3.
Assise 137.

806. And it is to know, that the grantee may accept of a presentation unto a benefice conditionally, &c. if the benefice be convenient, &c. and then presently, when he seeth and perceiveth that the same is not convenient, he may refuse the same: But if after that he perceiveth that the benefice is not convenient, he be admitted, he cannot now refuse the same before induction; but if he do not perceive the same before his induction, then he may refuse it for the same cause before his induction. And notwithstanding that the grantee doth accept of the benefice generally, yet the annuity is not determined before he be inducted, if not that the cause of the proroguing of his induction be in his own default; inasmuch as if the day of payment of the annuity be incurred mesne after his admission, and his induction, the grantee shall have the same, &c.

* [361]

* 807. And it is to know, that if I grant a rent, or annuity, or other thing, or do enfeof

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enfeoff a stranger of land, or do lease land
 unto a stranger upon condition, that if he
 purchase lands or tenements of the value of
 ten pounds by the year, that then I shall re-
 enter into the land: And if the condition be
 annexed unto the grant, that then the grant
 shall be void, and determined: And the feoff-
 fee, grantee or lessee, and a stranger, purchase
 jointly land, or rent, of the value of ten
 pounds by the year, yet I may not enter, &c.
 For notwithstanding that every jointenant be
 seised of the whole, and through the whole,
 yet the same doth not prove, that the feoff-
 fee, grantee, or lessee alone, hath purchased
 land of the value of ten pounds: And the
 intent of the condition was, that it shall be
 as much in value, viz. of the value of ten
 pounds unto the feoffee, grantee, or lessee.
 But if the feoffee, grantee, or lessee, hath
 purchased land or rent, or houses, or the re-
 version of the yearly value of ten pounds
 jointly with a stranger, and the stranger who
 is the joint purchaser with him doth release
 unto him all his right in the land, rent, or
 reversion, so purchased, the condition is per-
 formed; so as that I may * well enter. But * [362]
 if such feoffee, grantee, or lessee alone, pur-
 chase common of the value of ten pounds, H. 21 H.
 yet I cannot enter; for common is not com- 6. 28.
 prised within the words of the condition,
 viz. within the words of land or tenements;
 &c.

808. And if J. S. seised of lands of the
 value of ten pounds, do grant a rent-charge
 of forty shillings out of the same land unto a
 stranger; and afterwards J. S. do enfeoff

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such feoffee, grantee, or lessee, upon condition, the condition is not performed. But if the grantee of the rent doth release all his right in the lands, whereout the rent is issuing, unto the feoffee, grantee, or lessee, upon condition, then being seised of the land by force of the feoffment of *J. S.* the condition is performed, &c. The same law is, if the rent were first granted to such feoffee, grantee, or lessee, upon condition; and afterwards such feoffee, grantee, or lessee, upon condition, had purchased the land whereout the rent was issuing; for then he hath lands and tenements of the same value, &c.

809. And if a man seised of land of the value of ten pounds, grant common of pasture for twenty oxen in the same land unto a stranger, and afterwards do thereof enfeoff the * feoffee, grantee, or lessee, upon condition, now the condition is not performed, for land or other thing *tantum valet quantum vendi potest*. And this land cannot be sold by the feoffee unto the value of ten pounds; for if a man sue forth an execution upon a Statute-Merchant of the same land against the feoffee, or hath judgment to recover in value against him, by reason of voucher, this land shall be extended, and the common shall be recouped and deducted, &c.

810. But if I be bounden unto *J. S.* in a hundred pounds, to enfeoff him of the manor of *Dale*, before such a day, and after the delivery of the bond as the deed of the obligor, the obligor doth grant a rent-charge of four pounds, issuing out of the manor of *Dale*, and afterwards do thereof enfeoff the obligee before

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before the day, the condition is performed. But if he had tendered a feoffment of the moiety, or of the third part of the manor, unto the obligee before the day, &c. the obligee might well refuse the same, and bring his action of debt upon the obligation; *causa patet*, &c.

811. And if a man be bounden to appropriate a Church at his own costs, and before the appropriation a pension is granted out of the same, and afterwards before the day he doth * appropriate the same, the condition is performed, &c. If a man seised of land do thereof enfeoff a stranger upon condition, that if he, *viz.* the feoffee, do take a wife seised of land of the value of ten pounds, that then the feoffor shall re-enter. And a sole woman seised of land of the value of twenty pounds, doth grant a rent-charge of five pounds issuing out of the same land unto the feoffee, and afterwards the feoffee and she do intermarry, *quære* if the condition be performed; for the land was not of the value of ten pounds, till after the intermarriage, &c.

812. If a man seised of land do thereof enfeoff a stranger upon condition, that if he purchase land of the value of twenty pounds, that then the feoffor shall re-enter; and afterwards the feoffee doth recover lands of that value in an action ancestral or possessory, the cause of which action was given unto him after the feoffment upon condition, the condition is not performed. *Quære*, if the recovery be upon a false title. But if the feoffee after the feoffment, do disseise a stranger
of

H. 3 H.

7. 4.

* [364]

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of land of the value of twenty pounds, the condition is performed, notwithstanding that the disseisee do re-enter into the same land, or doth re-enter the same in an assise, &c.

* [365]

* 813. If such feoffee upon condition be impleaded of the land of the value of twenty pounds, of which he was seised at the time of the feoffment, and he voucheth a stranger by force of a warranty made upon him before the feoffment, and the vouchee doth enter into the warranty and lesseeth, &c. And the demandant hath judgment for to recover against the tenant, and the tenant hath judgment to recover over in value against the vouchee, and each of them hath execution against the other; now it seemeth the condition is performed; for notwithstanding that the warranty was before the feoffment upon condition, yet the title for to recover in value shall not have relation, but unto the vouchee, and he is in the land recovered in value by the vouchee; insomuch as if the vouchee hath the land recovered in value by disseisin, the disseisee shall have thereof a writ of *entre sur disseisin en le per* against him who recovered them in value, &c.

814. Know, that some have said, when the condition cometh from the feoffor, and the feoffee hath done as much as lieth in him for to perform the condition, so that there is no default in him, that it is not reason that he should lose the land. And therefore they say, that if *J. S.* be seised of land * in fee, and do thereof enfeoff *T. K.* upon condition that he shall pay unto *C. B.* twenty pounds before such a day, &c. and he doth tender

* [366]

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tender to him the money accordingly, and he refuseth the same, they say that *T. K.* shall hold the land unto him and his heirs for ever, because the condition cometh from the feoffor, and no default is in the feoffee, &c. and it is not reason that by the negligence of a stranger the feoffee should lose the land where he doth not take upon him to make the stranger receive the money, and it is the folly of the feoffor to make the feoffment upon such a condition, if not that he well knew that the stranger would receive the money. And they say that the same law is, if a man seised of land doth thereof enfeoff *J. S.* upon condition that he shall enfeoff *T. K.* for a certain sum of money, and expend the same money for the soul of the feoffor; and *J. S.* doth offer unto *T. K.* a feoffment of the same land for the same sum of money, and he refuseth the same, they say that the feoffor nor his heirs M. 19 H. shall not re-enter, but that the feoffee shall 6. 34. hold the land to him and his heirs for ever. E. 2 E. 4. 1.

815. And also they say, that if I do enfeoff *J. S.* of land upon condition, that he shall thereof enfeoff *T. K.* and I tender a deed of the feoffment * unto *T. K.* and he * [367] doth refuse the same, that neither I nor my heirs shall enter, but that the feoffee and his heirs shall hold the land for ever. And they say, that these cases are not like unto this case, viz. where I bail my goods unto *J. S.* to bail over unto *T. K.* and *J. S.* doth ten- T. 1 E. 5. der the goods unto *T. K.* and he refuseth to 2. have them; in this case I shall have my goods again; because that the property of them was never out of me, and the property thereof was

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was at no time in *J. S.* But in the cases before of feoffment it is otherwise; and also they are not like unto the case, where a man is bounden in forty pounds that he shall enfeoff *T. K.* of black acre at a day certain, and the obligor doth tender the feoffment according unto the condition of the bond unto *T. K.* and he refuseth the same, the obligor hath forfeited his bond, because he took upon him for to enfeoff *T. K.* and the obligor is bounden for to do it at his peril, &c. But notwithstanding all these reasons, the law is contrary in the cases before of feoffments, because that it appeareth by the words of the condition, that the intent of the condition is not, that the feoffee shall hold the land unto him and his heirs for ever, if the condition

* [368] be not performed, and the condition * is not against the law, nor repugnant unto the law, nor impossible; and therefore, if it be not performed the feoffor, and his heirs may enter. And sundry cases are put before concerning this matter, to prove the same in divers places of this treatise of CONDITIONS.

E. 2 E. 4. 816. But if I be seised of land, and do thereof enfeoff a stranger, upon condition, that before such a day he shall give the land unto a stranger in tail, and before the day the feoffee doth tender a gift in tail of the same land unto the stranger, and he refuseth the same, in this case, the feoffee shall keep the land unto him and his heirs for ever, because that the intent of the condition, according unto the words of the condition cannot be otherwise taken; for notwithstanding that the gift in tail had been made according

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to the condition, yet the reversion of the same land doth remain in the feoffee and his heirs, which reversion should be devested out of the feoffee and his heirs, if the feoffor should enter into the land; and therefore the feoffee shall hold the land to him and his heirs for ever, &c.

817. And it is to know, that if a man be M. 12 H. feised of land, and doth thereof enfeoff a 4. 2. stranger, upon condition, * that the feoffee * [369] shall give the same land unto the feoffor and M. 2 H. 4. his wife in special tail, the remainder unto 5. the right heirs of the feoffor, and the feoffor Lit. §. 352. dieth without issue by his wife, and his wife not with child, and the wife doth take another husband, and the feoffee doth lease the land unto the second husband and his wife, for the life of the wife, without impeachment of waste, the remainder thereof unto the right heirs of the feoffor: In this case the condition is performed, and yet the estate is not made according to the words of the condition, &c.

818. And know, that land, rent, or common, &c. unto which a condition *in fait* is annexed during the estate unto which the condition is annexed in possession, or in right, is chargeable with the condition, in whose hands soever the land, rent, or common shall come, if it come not unto our Sovereign Lord the King, of which I will not speak; or otherwise if it be not in special cases. And therefore if I be feised of land in fee, and do thereof enfeoff J. S. upon condition, and the feoffee is disseised, and the disseisor thereof dieth feised, and his heir is in the land
by

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by descent, in whose time the condition is broken; I may enter for the condition broken. And in the * same case, it is said, that I may enter upon the heir of the disseisor for the condition broken, before the disseisin, notwithstanding the descent. And others think the contrary, because that then my title of entry is before the descent, which title of entry shall be bound by the descent. *Quare*, for if the condition be broken (the land being in the possession of the feoffee) and afterwards the feoffee doth die seised, yet the feoffor may enter upon him for the condition broken before the descent, &c.

819. If there be lord and tenant, and the 22 Aff. ph. tenant doth enfeoff a stranger upon condition, and the feoffee dieth without heir, or is 49. attainted of felony, or murder, or petit treason, &c. so as the tenancy doth come unto the lord by escheat; yet the tenancy doth remain charged with the condition. But if a man seised of land, doth lease the same land for life upon condition, and afterwards doth graunt the reversion unto a stranger upon condition, and the lessee doth attorn, and afterwards dieth, and the grantee of the reversion doth enter into the land, he shall hold the land without any condition, because that the estate unto which the condition is annexed is determined in possession, and also in right. And if one do disseise the feoffee of the

* [371] * disseisor, or the heir of the disseisor, or any other person who hath the land by unjust title, and doth thereof enfeoff a stranger upon condition, and the land is afterwards lawfully devested out of the possession of the feoffee,

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feoffee, &c. by him who hath right according to his title, by entry or by action, as the case shall require, the land is discharged of the condition, &c.

820. But if a man seised of land in fee, H. 8 H. 7. doth lease the same land unto a stranger for 9. years, and one who hath no right unto the H. 20 E. 4. land doth put out the lessee, and dieth there- 18. of seised, and his heir is in the land by descent, and the heir doth enfeoff a stranger of the same land upon condition, upon whom the lessee for years within the term doth enter, claiming his term; the lessee shall hold the land during all the term discharged of the condition, and yet the estate of the feoffee upon condition is not altogether determined in possession, for notwithstanding the entry of the lessee for years, the possession of the freehold of the same land doth remain in the feoffee upon condition, &c. Dyer 178.

821. If I be seised of land in fee, and do enfeoff a stranger thereof upon condition, and my feoffee doth enfeoff J. S. of the same land upon condition, the condition which was annexed * unto the first feoffment is * [372] broken, for which, if the first feoffor doth enter, and re-enfeoff J. S. without any condition, J. S. shall hold the land discharged of the condition, &c. *causa patet*, &c.

822. And it is to know, that if a man seised of land in fee doth take a wife, and during the marriage doth thereof enfeoff a stranger upon condition, and the husband dieth, and the feoffee doth endow the wife of the feoffor of a third part of the land, &c. this third part is discharged of the condition.

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And if the woman do grant her estate unto the feoffee who is in reversion, the condition is presently revived, because that this grant doth enure by way of surrender, yet if the woman had granted a rent-charge issuing out of the same land, and afterwards had granted her estate unto the feoffee in the reversion, the feoffee should hold the same charged during the life of the woman tenant in dower; see divers cases concerning this matter in the Chapters of GRANTS and SURRENDERS; *mutatis mutandis*, &c.

823. If feoffee upon condition be of land, and he doth lease the same land unto a stranger for life, and the feoffor doth release all conditions, and all demands which he hath unto the same land unto him in the reversion; by this release the freehold is discharged * [373] * of the condition, and if the feoffor had released all conditions, which he had in the same lands unto the lessee for life, by such release, the reversion is discharged of the condition.

H. 4 H. 7. 6. 824. But if J. S. be collector of my rents of divers houses, and he be bounden unto me in one hundred pounds that he shall yield unto me a just account, and that within forty days next after the accompt, that he shall pay all that which he is found in arrearage; and afterwards before any accompt I do discharge the obligor of the collecting of the rent of one house, this is no discharge for the rest, but he ought to collect the rents of the residue of the houses, and render accompt thereof, &c. otherwise he doth forfeit his bond, for that the discharge is for his advantage,

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tage, &c. If there be lord and tenant by fealty, and by the service to plow a hundred acres of land, and the lord doth discharge E. 7 H. 7. him of the plowing of twenty acres of the 8. same land, this doth not discharge him from plowing of the residue of the hundred acres, for this discharge is for the advantage of the tenant; and the service is not so an entire service, but that it may be severed, &c.

825. But if I be seised of ten acres of land in fee, and I do lease the same land unto a stranger for life, or for years, reserving ten shillings rent unto * me, &c. the rent pay- * [374] able yearly at the feast of *Easter*; and the lessee doth bind himself unto me in a bond of one hundred pounds, to pay the rent reserved upon the lease justly according to law, and before any day of payment I do put the lessee E. 9 E. 4. 1. out of part of the land, and the lessee doth E. 21 E. 4. occupy the residue of the land for the whole 34. year, and will not pay any rent; yet the bond is not forfeited, for by this putting out of the lessee of parcel of the land, the whole rent is put in suspense: But if one day of payment be incurred before the ouster, then E. 45 E. 3. the lessee, ought to pay the same, otherwise 3. he hath forfeited his bond: But if I do put M. 44 E. 3. the lessee before the feast of *Easter*, out of 37. one acre of the land leased, and do occupy the same until the feast of *Easter*, and then the lessee doth re-enter, and doth occupy the land until the feast of *Easter*, and doth not pay me any rent for this latter feast, the bond is forfeited; *tamen quare*.

826. And if a stranger who hath not any E. 22 H. 6. right, doth put out the lessee for years of the ac. same

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same land, before any day of payment, and keepeth possession thereof until the day of payment be past, yet the lessee ought to pay me the rent at the day whereon it ought to be paid, otherwise he hath forfeited his bond ; *causa patet.*

827. But if a disseisor doth lease land
 * [375] * which he hath by disseisin for term of life, or for years, reserving rent, payable yearly at the feast of *Easter*, and the lessee doth bind himself in ten pounds to pay the rent unto the lessor justly, and the disseisee doth put out the lessee before any day of payment, and afterwards the day of payment doth come, and the lessee doth not pay the rent at the day, the bond is not forfeited ; for he hath no remedy against the disseisee, because he had a right to enter. But if a day of payment be incurred before the disseisin, it behoveth the lessee to pay the rent at the day, otherwise he forfeiteth his bond, &c.

- E. 9 E. 4. 828. If three coparceners be seised of a
 1. manor, and one of them in her own name,
 M. 12 H. and without the agreement of the other co-
 8. 3. parceners doth lease the whole manor unto
 E. 20 H. J. S. for four years, yielding five pounds
 6. 24. yearly at the feast of *Easter* unto the lessor and her heirs, and J. S. doth bind himself in forty pounds unto his lessor, to pay the rent reserved, &c. and before any day of payment the two other coparceners which did not make the lease, do put out the lessee out of the whole manor, and keep the possession until the day of payment of the rent be incurred ; yet it behoveth the lessee to pay the third part of the rent reserved to his
 his

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his lessor, otherwise he hath forfeited his bond; for the two coparceners * who did put him * [376] out, have not right but to two parts of the manor, &c.

829. If a man be seised of two acres of land in fee, and do enfeoff J. S. of one of them by deed with warranty, and J. S. is impleaded of the same acre by a stranger, and J. S. doth vouch his feoffor to warranty, &c. and after the summon *ad warrantizandum*, &c. awarded, and before the day of the return, his feoffor being seised of another acre of land doth thereof enfeoff a stranger upon condition, and at the day of *English ad warrantizandum* returned, the feoffor doth appear and entred into the warranty, and pleads, and the demandant hath judgment for to recover against the tenant, and the tenant hath judgment to recover over in value against the vouchee, and the demandant doth enter into the land in demand by force of the judgment, and the tenant by suit (as he ought) hath execution against the feoffee upon condition of the same acre, whereof he was enfeoffed by the vouchee mesne, between the awarding of the *English ad warrantizandum*, and the day of the return of the same writ, the tenant, viz. J. S. shall hold this acre discharged of the condition; because he is in the same acre by a title before the feoffment upon condition; for his title until this acre doth begin by the vouchee, which * was be- * [377] fore the feoffment upon condition, &c. And as it is said of land, so shall it be of a rent, or common, and of other things which lie in grant; *mutatis mutandis*, &c.

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830. Now is to shew, what persons shall take advantage of conditions when they are executory, and what persons shall take advantage of conditions when they are executed. And know, that no manner of persons shall take advantage of conditions executory if they be not parties or privies, &c. And not all manner of privies; for privies in estates shall not take advantage of conditions executories, &c.

831. And therefore, if a man seised of one acre of land do lease the same acre for life, upon condition that the lessee shall pay twenty shillings at a day certain, the remainder of the same acre of land unto J. S. in fee, J. S. shall not take advantage of this condition by way of entry, and yet he is privy in estate; for his estate and the estate of the lessee were made at one and the same time, &c. Nor privies *in fait* shall not take advantage of conditions executories. And therefore, if a man seised of land, doth lease the same acre for life upon condition, &c. and afterwards doth grant the reversion unto a stranger in fee, and the lessee doth attorn, yet the grantee shall not take advantage of this condition by * way of entry; notwithstanding that he be privy *in fait*; and he is said privy *in fait*, because he hath the reversion by grant, &c. Nor privies in law shall not take advantage of conditions executories.

832. And therefore, if there be lord and tenant, and the tenant doth lease the tenancy for life unto a stranger upon condition, and afterwards the tenant dieth without heir, and the reversion doth escheat unto the lord, the lord

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lord shall not take advantage of the condition by way of entry. And the lord in this case is said privy in law, because he hath his estate in the reversion by the law only, *viz.* by escheat: But privies in right shall take advantage of conditions executories, &c.

833. And therefore, if lessee for years be of land, and he granteth his estate unto a stranger upon condition, &c. and maketh his executors and dieth, in this case, his executors shall take advantage of this condition by way of entry, for they are privies in right; for if the condition be broken, and they do enter into the land, &c. they shall have the same in the right of the testator unto the use of his soul, &c.

834. If a man seised of land for the term of twenty years in the right of his wife, doth lease the same land unto a stranger for ten years * rendring rent, &c. and for default * [379] of payment to re-enter, and afterwards the husband dieth, and then the rent is behind, I conceive that the wife shall have the rent, and not the executor; because that the rent was to the husband by way of reservation, and the wife hath the remain of the term: But notwithstanding that the wife shall have the rent, yet she shall not enter for the condition broken; *causa patet*, &c.

835. If an Abbot do enfeof a stranger of land, which he hath in the right of his house upon condition, his successor shall take advantage of the condition by way of entry if it be broken, because that he is privy in right. The same law is of Dean and Chapter, and such like persons, *mutatis mutandis*. And

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- privies in blood, as the heir of the feoffor, &c. shall take advantage of conditions executory by way of entry, &c. And the parties unto the conditions shall take advantage of conditions by way of entry, as in the cases before is shewed. And as it is said of land, so shall it be of things which lie in grant; *mutatis mutandis*. And where it behoveth such persons to take advantage by way of entry, or to make a demand, Master Littleton hath shewed in his third book in his Chapter of Estates upon Condition; *mutatis mutandis*.
- 40 Aff. pl. 11. M. 4 H. 6. 8. * [380] * §36. And it is to know, that if a man feoffed of land in fee, do lease the same land for life, or for years, reserving ten shillings rent payable yearly at the feast of *Easter*, and if the rent be behind in part or in all by the space of a month after any day of payment, in which it ought to be paid, that then it shall be lawful for the lessor and his heirs to re-enter, &c. And the lessor cometh upon the land at the last instant of the feast day of *Easter*, and there demandeth the rent (as he ought) if he will take advantage of the condition, and the lessee is not tied to be upon the land to pay him the rent, but at the last instant of the day on which it ought to be paid; and the lessor is there to demand the rent, and there is no body there to pay it unto him, notwithstanding this demand, if the lessor will take advantage of the condition by way of entry, it behoveth him to make the like demand the last instant of the day of the month, and if he do make such demand, and the lessee is there, or other for him, ready to pay him the rent, he shall not
- E. 20 H. 6. 32. M. 2 H. 7. 14.

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not enter notwithstanding that there was no body ready to pay him when he made the first demand; and yet if he had not made the first demand, and that there was no body ready for to pay him, yet * he could not * [381] re-enter, if the lessee or any for him be upon the land at the time of any of the demands ready to pay the rent, and doth tender the rent unto him who demandeth the same (as he ought to do), &c. and if he refuse it, then the lessor, nor any for him can re-enter. And if (when the first demand was made) there was no body ready for to pay the rent, and mesne, after the demand, and before the last day of the month, the lessee doth tender the money unto his lessor of the land, and the lessee doth refuse the same, and at the latter end of the last day of the month, the lessor doth make another demand of the rent upon the land, and there is no body ready for to pay the same, the lessor may re-enter notwithstanding the refusal of the rent at the time of the tender made unto him of the land; because he was not bounden to receive the same off the land; *tamen quare* thereof; but if he had received it, then he could not re-enter notwithstanding that the receipt thereof were off the land. T. 22 H. 6. 65.

837. If mesne, after the first demand, and before the latter end of the month the lessor do happen to come upon the land, and the lessee doth tender unto him being upon the land, the rent. It is said that the lessor is bounden for to receive it, because * the * [382] sent

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rent was then due, and it was tendred unto him in the place where it ought to be paid, &c.

838. And it is to know, that if a man be seised of a mansion-house, with divers pasture fields, arable lands, and woods thereunto appertaining, in fee, and doth lease the house with all the fields and woods unto a stranger for life, or for years, reserving the rent of ten pounds payable yearly at the feast of *Easter*, &c. and for default of payment thereof, that it shall be lawful for the lessor and his heirs to re-enter; in this case, the lessor may distrain in every parcel for the whole rent; but if he will take advantage of a re-entry, he ought to demand the rent at the mansion-house, because it is parcel of the thing let, and it is the most convenient place for the lessee to stay, to tender the rent, &c. And if such lease be made of divers fields and woods, without any mansion-house, if the lessor will take advantage by re-entry, it behoveth him openly to demand the rent upon parcel of the lands leased, which by intendment of the law is as convenient for the lessee to stay there to be ready to pay the rent, as any other place parcel of the things let is, and not privately

* [383] to demand the rent in one parcel * of the wood, or in other private place of a field, to the end the lessee may not have knowledge of the demand, notwithstanding that he be upon the land ready to pay the rent, &c.

M.44E.3.

8.

839. And it is to know, that when conditions are executed, strangers shall take advantage

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vantage of them by way of plea, &c. as put E. 45 E. 3. case a man seised of land, doth thereof enfeoff a stranger upon condition, and afterwards the condition is broken, for which the feoffor doth enter into the land, and doth thereof enfeoff T. K. the feoffee upon condition doth re-enter, and T. K. doth bring an assise against him, and the feoffee upon condition doth plead the feoffment simply without any condition, and giveth colour to the plaintiff, &c. The plaintiff may plead that the feoffment was made upon condition, and shew the same in certain, and that the feoffor did enter for the condition broken, &c. and did enfeoff him, &c. this is a good matter of title, &c. and yet the plaintiff is a stranger unto the feoffment upon condition, &c.

840. It is commonly said, that when any person doth enter for a condition broken, that he shall be seised in the same manner and course as he was when he did depart with his possession, upon which the condition *in fait* was made. And therefore, if the * lessee upon a condition *in fait* * [384] of land doth grant a rent-charge issuing out of the same land, or doth make a recognizance, or is bounden in a statute-merchant, or in a statute-staple, &c. and the conusee or obligee hath the land whereof the feoffment was made upon condition in execution, and afterwards the condition is broken, for which the feoffor doth re-enter, the interest and estate of the conusee or obligee is defeated and avoided, and the land

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also is discharged of the rent granted by the feoffee, and yet the condition was broken after the grant, recognizance, and obligation: And the reason is, because he made the feoffment of the land upon a condition expressed in the deed, discharged of the rent and of such execution. And for the condition broken he may re-enter, and have the land back in the same plight and condition, as it was when he did depart with the estate upon condition: Notwithstanding it doth not follow in every case, that when any person doth enter for a condition *in fact* broken, that he shall be seised in the same course, and in the same plight and condition, as he was when he did depart with the estate unto which the condition was annexed.

841. And therefore, if a man seised of
 * [385] land, doth lease the same unto a * stran-
 39 Aff. ph. ger for life, and the lessee for life doth
 15. thereof enfeoff a stranger upon condition *in fact*, and afterwards the condition is broken, and the lessee who is the feoffor doth enter, now he is not seised in the same plight as he was at the time of the feoffment made, for then the lessor could enter upon him, and oust him of his term, but now the lessor may enter upon him, and put him out of the term, for by the feoffment his lessor had title of entry, which title of entry is not discharged by the re-entry of the lessee for the condition broken; *causa patet.*

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842. If *cestuy que use* in fee of certain lands doth enter upon his feoffee according to the statute of *Richard 3.* in such case provided, and doth thereof enfeoff a stranger upon condition, that he shall pay unto him ten pounds before the feast of *Easter* next following, and the feoffor doth enter for the condition broken, in this case, the use is not revived, for by the feoffment made upon condition the use was determined and avoided, &c. And if there be disseisor of land, and he doth die thereof seised, and his heir is in the same land by descent, and the disseisee doth enter upon the heir and put him out of the land, and doth thereof enfeoff a stranger upon condition, and the heir of the disseisor doth enter upon the feoffee, * and the disseisee doth bring * [386] a writ of entry *Sur disseisin en le Rer.* against the heir of the disseisor, and doth demand the same land, and doth recover by confession, and hath execution thereof, and the feoffee upon condition, doth re-enter upon him, and afterwards the condition is broken, for which the feoffor doth enter; now, the feoffor is not seised in the same course as he was at the time of the feoffment made, for at the same time the heir of the disseisor might have entred upon him, and put him out of the land; but now he cannot so do, &c.

843. If there be lord and tenant, and the lord doth disseise the tenant of the tenancy, and doth thereof enfeoff a stranger upon condition, and afterwards the condi-

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tion is broken, for which the lord doth enter, upon whom the tenant doth enter, the seignory is not revived, and yet if the tenant had entred upon the lord before the feoffment made by him, the seignory had been revived; *causa patet*. The which proveth that the lord is not seised in the same course and plight after his entry for the condition broken, as he was at the time of the feoffment made upon condition, &c.

844. And it is commonly said, that when a man doth enter by reason of a condition in law, that he shall * take the land as he finds it; and the same is not so in all cases. For if a man seised of land, doth lease the same for life, there is a condition in law annexed unto the land, viz. that if the lessee do discontinue the reversion, that the lessor shall enter. And also another condition by statute law annexed thereunto, viz. that it shall not be lawful for the lessee to do waste in the land leased, &c. If in such case the lessee doth enfeoff a stranger of the land leased, and the feoffee doth grant a rent-charge out of the same land, and the lessor doth enter upon the feoffee, he shall hold the land discharged of the rent, because his title of entry doth commence by the feoffment which was before the grant: But if the lessee had granted the rent before the feoffment, and then the lessor had entred upon the feoffee, he should hold the land charged during the life of the lessee; *causa patet*, &c. And if the lessee had committed waste,

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waste, and had granted a rent-charge unto a stranger after the waste done, and the lessor had brought his action of waste, and recovered, the lessor should hold the land discharged of the rent; but if the grant had been made before the waste done, then he should hold the same charged during the life of the lessee, &c.

* 845. And if there be lord and tenant, * [388] and the tenant doth enfeof an Abbot of the tenancy; and the Abbot doth grant a rent-charge issuing out of the tenancy, and the lord doth enter within the year and day after the alienation made according to the statute of *Mortmain*, the lord shall hold T. 21 H. 6. the tenancy discharged of the rent granted 58. by the Abbot, &c. But if the tenant had granted a rent-charge issuing out of the tenancy before the alienation in *Mortmain*, and the lord had entred within the year after the alienation, &c. In this case the lord should have holden the tenancy charged with the rent, &c.

For other matters concerning DEEDS in general, see *Wood's Conveyancing, Part I.* who treats largely thereon.

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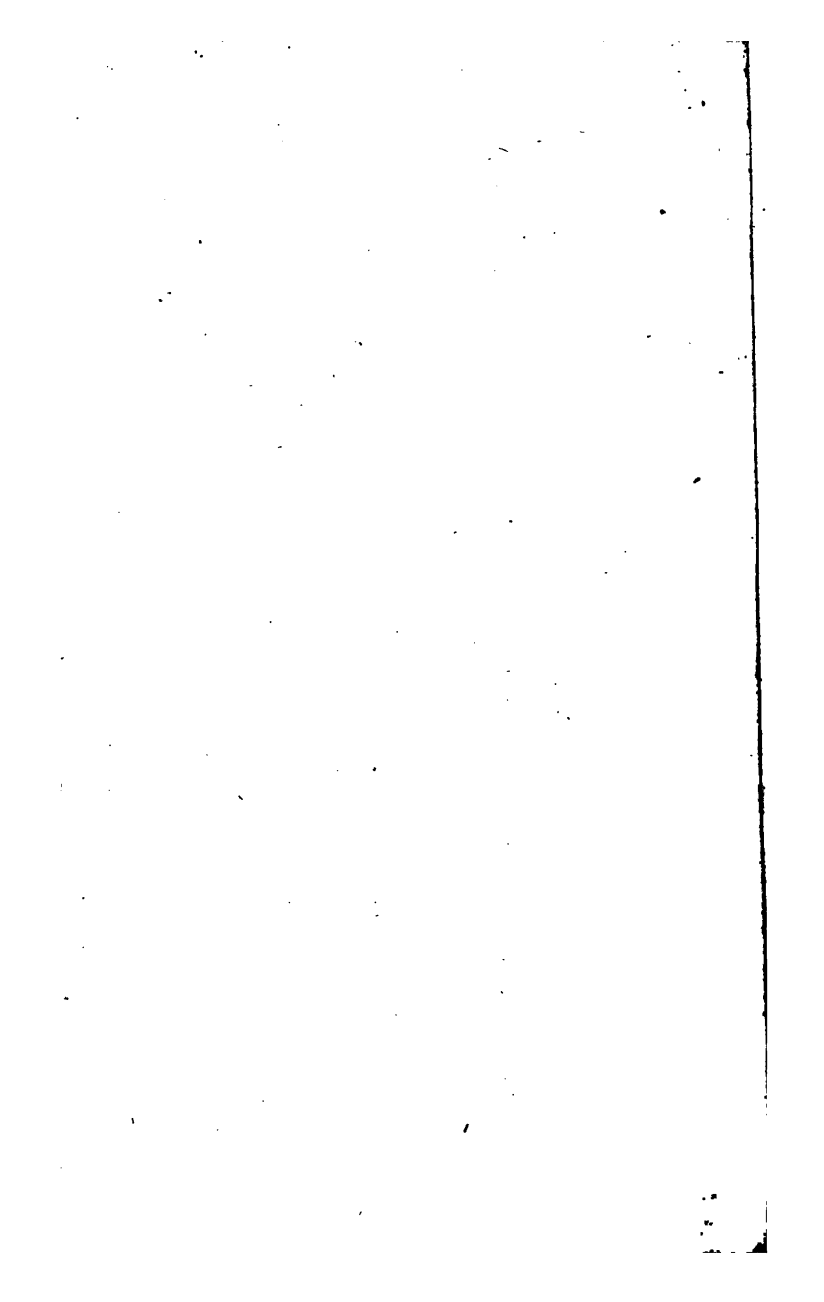
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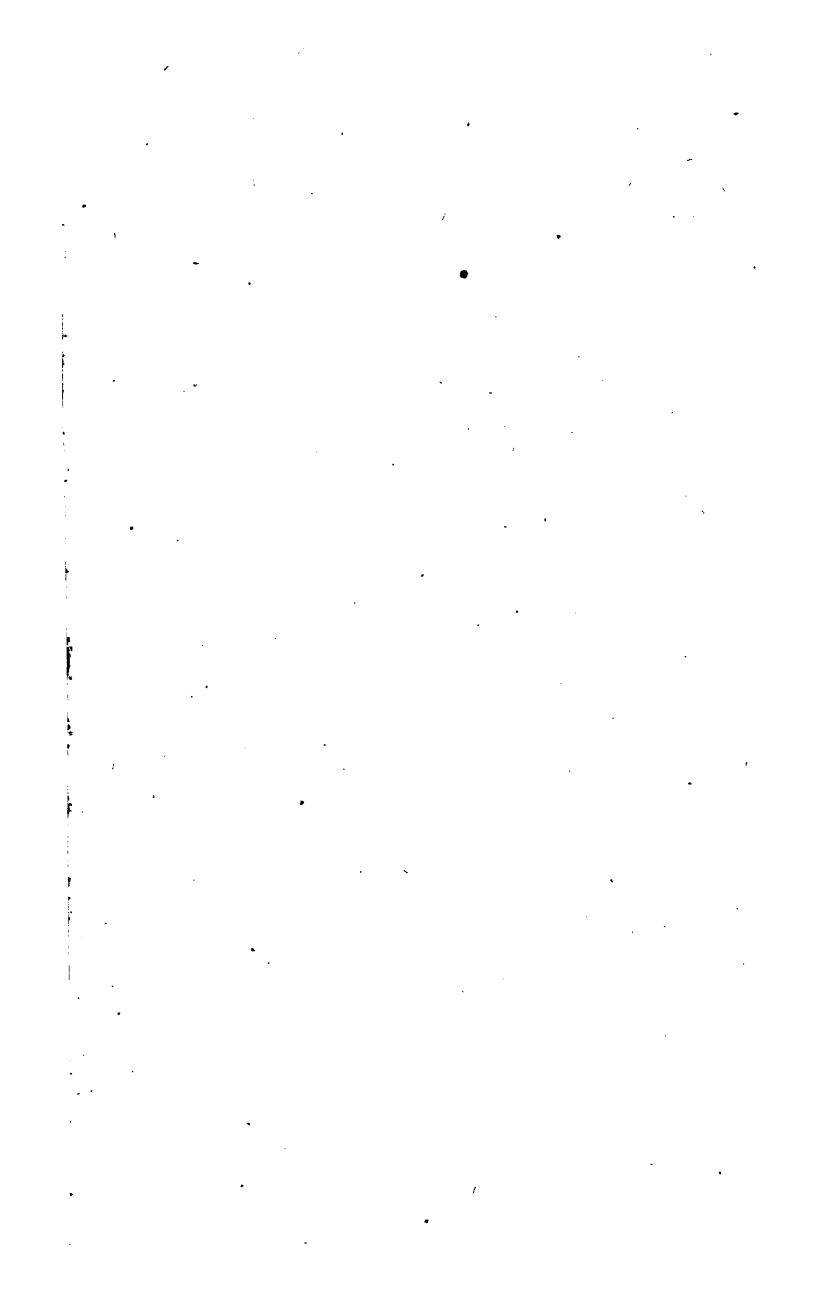
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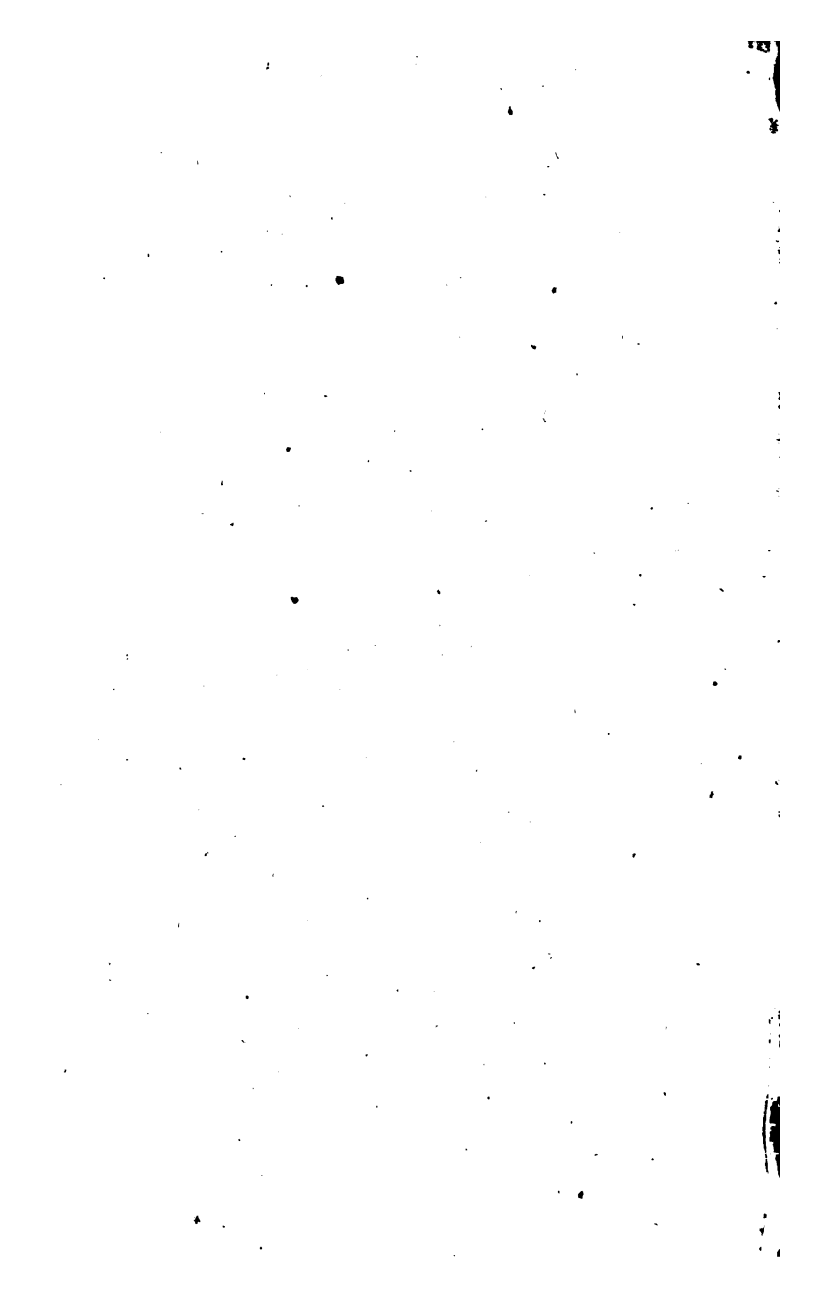
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